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System of administration of justice at the United Nations

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Interim Independent Assessment Panel on the system of administration of justice at the United Nations, submitted in accordance with resolution 69/203.

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Report of the Interim Independent Assessment Panel on the system of administration of justice at the United Nations

Summary

The Interim Independent Assessment Panel was appointed in March 2015. It was tasked to conduct an assessment of the system of administration of justice at the United Nations that was introduced in 2009. It began its work early in May and completed it towards the end of October 2015. The Panel considered the relevant resolutions of the General Assembly, the reports of the Secretary-General and the Internal Justice Council on the system of administration of justice at the United Nations and relevant sections of reports on and assessments of the justice system.

The Panel consulted numerous stakeholders on a confidential basis and on the understanding that no attributions would be made. They were either face-to-face talks or via videoconferences and/or teleconferences. A summary of the stakeholders' views can be found in section III, which is preceded by a brief description of the new system and the first six years of its existence. The Panel's assessment and suggestions for improvement can be found in section IV and a summary of its recommendations in section V.

The Panel is of the opinion that the system has made a good start and is an improvement over the previous system.

The justice system of the United Nations functions in a special and challenging environment. It is designed to contribute to better accountability of the Organization and its staff by resolving internal conflicts and dealing with misconduct. Very often, however, the victims of conflict and misconduct are not staff members and these victims turn to the United Nations for help and for remedies. Holding United Nations personnel accountable for their conduct and taking care of victims, whether United Nations staff or not, are key responsibilities for the Organization and its management. Not doing so entails impunity, which is bad for the Organization, for its mission, for staff morale and for justice.

The Panel was surprised to learn that only about half of the United Nations workforce has access to the justice system. Contract staff and consultants, among others, do not have access. This should be remedied. Many conflicts occur within the workforce between staff and "non-staff", which should be resolved through a single mechanism. The arbitration clause that the "non-staff" have in their contracts is prohibitive, in particular in the field, and costly for both parties if invoked. Effective recourse must be provided to all who are in an employment or contractual relationship with the United Nations.

It is clear that the new justice system is demanding for the Organization and in particular for its management. Decisions are increasingly being challenged and lessons must be learned from the outcome of the proceedings. This should result in improved management practices, in observance of rules and policies and in early resolution of disputes or, even better, dispute prevention. People and conflict management is an inherent part of modern management. Managers should be encouraged to respond positively to mediation attempts. The prime consideration for both parties should be that an agreed solution is better than protracted legalistic debates. Conflict resolution is about the continuation of working relationships, not about winning.

A great number of cases going through the justice system, in fact, concern career issues, as well as interpretation of rules and procedures. Better written rules, clearer procedures and consistent practices should avoid most of them.

Another matter that regularly leads to appeals concerns investigations. Investigations must be conducted by professionals and areas in which this is not the case must be reviewed.

Statistics show an increased number of cases over the past five years. The review has also shown that a great number of staff, in particular in the field, remain unaware of the justice system. It is therefore too early to conclude that the yearly number of cases has stabilized, which is all the more reason to accord priority to dispute avoidance and early resolution.

The Panel has analysed whether the goals have been achieved as they were set by the General Assembly when it decided to establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike.

The Panel concludes that the objectives have been met to a very great extent, but that further improvements are possible, and necessary, and this without the injection of major additional resources.

With regard to independence, the Panel is of the view that the principle of judicial independence needs to be strengthened, for example by better defining the status of both the Office of Staff Legal Assistance legal officers as counsel for staff and legal officers serving in the Registries. Tribunal judges should be officially involved in the selection process of Registrars and legal officers in the Registries. Moreover, the Tribunals should submit their annual reports directly to the General Assembly and the judges' legal status should be further clarified by recognizing them as officials other than Secretariat officials having their own conditions of service.

The justice system has become more transparent, but more outreach is needed in order to increase knowledge of the system by all staff and to make the system universally accessible. More transparency is needed on the part of the Tribunals, with more consistency in the proceedings before the Dispute Tribunal and more and better reasoning by the Appeals Tribunal in its judgments. The Panel notes that the search engine of the Tribunals' jurisprudence is being improved. As mentioned above, clearly written rules and procedures that are easily accessible improve transparency in decision-making and, hopefully, dispute prevention. The publication of guides with lessons learned from jurisprudence must be resumed.

The system is professionalized at almost all levels. The Panel finds the qualifications that are required of potential judges too limited and suggests that knowledge of human rights and international law, together with practical experience in administrative and criminal justice, be added. Judges should also be more acquainted with the Organization's structure, rules and procedures before they take up their duties. A single code of conduct needs to be introduced for all counsel acting before the Tribunals.

The system is somewhat more decentralized than before. Ombudspersons and Office of Staff Legal Assistance legal officers can be found in the regions, and the Dispute Tribunal sits in three locations, for example. The Panel observes, however, that still too many functions are centralized at Headquarters, such as the Management Evaluation Unit and the Office of Legal Affairs in the area of disciplinary matters. This should be remedied. Justice should be closer to the people whom it serves, both through the physical presence of its components and through better access to focal points, guides and resources, among other things. The Panel notes in general a lack of decentralization, delegation of authority and empowerment for field offices and missions. This leads to too many unnecessary instances of friction and misunderstanding with Headquarters.

Where the rule of law and due process are concerned, the Panel, first, recommends that the Dispute Tribunal, in order to enhance consistency, lay down detailed provisions for procedure, either in the rules of procedure or in practice directions. Staff should be protected from retaliation for appearing as witnesses or for lodging an appeal.

The right of appeal is a very fundamental right, but should not be abused. The Dispute Tribunal should not hesitate to award costs against a party that manifestly abuses the proceedings or to summarily dismiss a case.

The Panel concludes that no dramatic corrections are necessary. Some areas (the Management Evaluation Unit, the Office of Staff Legal Assistance and the Appeals Tribunal) are underresourced, which should be remedied. The Panel's proposals in this respect are not too burdensome. The proposals for dispute avoidance and early resolution should, on the other hand, reduce the number of cases going through the formal system. On the other hand, the Panel has not identified areas that are overresourced.

The justice system is playing its part in securing a respectful workplace, which is the overall goal that must be achieved so that the Organization can fulfil its mandate. A number of measures must be taken to achieve this. Only a few, however, concern the justice system directly.

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I. Introduction

A. Appointment

1. On 30 March 2015, the Secretary-General appointed the following members of the Interim Independent Assessment Panel pursuant to paragraph 10 of General Assembly resolution 69/203 and paragraph 12 of Assembly resolution 68/254: Jorge Bofill, Chris de Cooker, Bob Hepple, Hina Jilani, Navanethem Pillay and Leonid Skotnikov. The Panel appointed Chris de Cooker to act as its facilitator.

2. Bob Hepple, unfortunately and about halfway through the exercise, had to resign from the Panel for medical reasons; he passed away shortly thereafter. The Panel recognizes his role in shaping its workplan and his active participation in many interviews and in the first discussions on the outline of the present report.

3. Ann Makome served as the Secretary of the Panel. Beverley Medas provided administrative support.

B. Mandate

4. The Panel was appointed to conduct an interim independent assessment of the system of administration of justice at the United Nations. Its appointment followed the adoption by the General Assembly of resolution 69/203 on 18 December 2014 in which the Assembly reaffirmed its decision contained in resolution 68/254 that an interim independent assessment was to be carried out in a cost-efficient manner by independent experts, including experts familiar with internal labour dispute mechanisms.

5. The Panel was tasked to examine the system of administration of justice in all its aspects, with particular attention to the formal system and its relation with the informal system, including an analysis of whether the aims and objectives of the system set out in resolution 61/261,[1] adopted to create a new system of administration of justice, were being achieved in an efficient and cost-effective manner.[2]

6. The General Assembly decided that the objective of the interim assessment was the improvement of the current system and that the assessment should include consideration of, inter alia, elements set out in annex II to the report of the Secretary-General on administration of justice at the United Nations[3] and in the letter from the Chair of the Sixth Committee on the subject[4] and any other significant issues relevant to the assessment, such as the role of stakeholders in the system of administration of justice in the preparation of relevant proposals.[5] The Assembly requested the Secretary-General to transmit the recommendations of the

[1] Resolution of the General Assembly to create a new system of administration of justice, adopted on 4 April 2007.

[2] See resolutions 69/203, para. 10, and 68/254, paras. 11 and 12.

[3] A/69/227.

[4] A/C.5/69/10, annex.

[5] Resolution 69/203, para. 12.

Panel, together with its final report and his comments, for consideration by the Assembly at the main part of its seventy-first session.[6]

7. The terms of reference prescribed by the Secretary-General and communicated to the Panel include the parameters and scope of the assessment as formulated by the General Assembly in the above-mentioned resolutions. They are set out in the annex to the present report.

8. Taking note of the resolutions and the terms of reference, the Panel understands that examining the system of administration of justice in all its aspects entails a thorough understanding of each component of the system, the standards that are relevant for an evaluation of the performance of those components and the processes that string those components into a coherent system.

9. To fully discharge its mandate, the Panel looked into the most important root causes of grievances that lead to either litigation or the use of the informal system for settlement of disputes in order to assess the extent to which management practices affected both the workload of the system of administration of justice and its efficacy in achieving the goals for which the new system was established.

10. The scope of the mandate requires a study of the essential jurisprudence of the Tribunals to assist in reaching conclusions on their role in bringing clarity to the applicable laws and rules of the Organization.

11. The Panel is particularly conscious of its responsibility to examine the aspect of accountability.[7] A key element of the assessment is the extent to which the system promotes accountability to ensure that the rights of the staff are sufficiently respected in all administrative decisions, as well as a means to limit disputes by improving practices in governance.

12. The Panel understands that it was not tasked to propose a redesign of the architecture of the existing system. It has, therefore, reviewed the functioning of the various mechanisms of the formal and informal system, bearing in mind the objectives for which they were established and the standards that they are expected to uphold and, where necessary, made recommendations for the improved performance of those mechanisms and of the system of administration of justice as a whole.

C. Methodology

13. The Panel began its work in May 2015. It met from 4 to 12 May, 8 to 19 June, 2 to 10 July, 27 July to 6 August and 26 August to 4 September. Views, input and drafts were exchanged by e-mail.

14. In accordance with annex II to the report of the Secretary-General (A/69/227), the Panel considered the relevant resolutions of the General Assembly, the reports of the Secretary-General and the Internal Justice Council on the system of administration of justice at the United Nations and relevant sections of reports on and assessments of the justice system.

[6] Ibid., para. 13.

[7] See resolution 61/261, para. 4.

15. The Panel consulted numerous stakeholders, such as current and former United Nations staff who were either involved in or users of the justice system; staff unions and associations; management within the Secretariat and the funds and programmes, including management evaluation units; legal representatives of staff and management, including the Office of Staff Legal Assistance and the Administrative Law Section of the Office of Human Resources Management and their counterparts in the funds and programmes and the Department of Peacekeeping Operations and the Department of Field Support; the Office of Internal Oversight Services (OIOS) and other investigative authorities in the funds and programmes; judges, Registrars and legal officers of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal; the Office of Administration of Justice; the Office of the United Nations Ombudsman and Mediation Services; staff counsellors; the Internal Justice Council; and members of the former Redesign Panel on the United Nations system of administration of justice.

16. The consultations were conducted on a confidential basis and on the understanding that no attributions would be made. They were either face-to-face talks or via videoconferences and/or teleconferences. The Panel conducted videoconferences and/or teleconferences to consult staff in Afghanistan, Cambodia, India, Iraq and Thailand and several peace operations to elicit their views on the functioning of the system of administration of justice at the United Nations and whether it was fulfilling the objectives envisaged for it by the General Assembly in resolution 61/261. Members of the Panel met in person with stakeholders in Beni (Democratic Republic of the Congo), Entebbe (Uganda), Geneva, Goma (Democratic Republic of the Congo), Nairobi, New York, Santiago, The Hague (Netherlands) and Vienna.

17. The Panel received information from relevant stakeholders, both spontaneously and upon request, regarding the general direction and functioning of the system of administration of justice at the United Nations.

18. In May, to collect the maximum information, the Panel sent a broadcast message on the United Nations intranet, iSeek, to all staff, to which some reacted. The Panel also created an e-mail address accessible only by the Panel members and the Secretary. Dozens of staff responded by sending comments and suggestions. The Panel held town hall meetings, several of which by videoconference.

19. In accordance with paragraph 23 of the report of the Advisory Committee on Administrative and Budgetary Questions,[8] the Panel invited Member States to provide input as to relevant best practices from their national jurisdictions for its consideration as part of the assessment.

20. Lastly, the Panel, throughout its work, relied on its members' knowledge of and experience with public international law, human rights law, national and international labour and civil service law and dispute resolution systems in other international organizations.

[8] A/69/519.

II. First six years of the new internal justice system at the United Nations

21. By its resolutions 61/261, 62/228 and 63/253, the General Assembly put into place a new system of administration of justice for the settlement of employment disputes between the Organization and its staff. The system entered into force on 1 July 2009.

A. Informal system

22. It is to be recalled that informal dispute resolution, and in particular the ombudsman function, existed in the United Nations before the creation of the new justice system. The Office of the United Nations High Commissioner for Refugees (UNHCR), for example, has had a mediator since 1993.[9] In June 2002, the Office of the Joint Ombudsperson for the United Nations Development Programme, the United Nations Population Fund and the United Nations Office for Project Services was established, replacing the voluntary Ombudsman Panel, and which since 2006 has also served the United Nations Children's Fund. Lastly, the Office of the Ombudsman was created in October 2002.

23. In 2009, the General Assembly decided to create a single integrated and decentralized office of the ombudsman for the Secretariat, funds and programmes. It also decided to formally establish a mediation division located at Headquarters within that office. The integrated office thus comprises the ombudspersons for the United Nations, the funds and programmes and UNHCR, and the Mediation Division. Discussions on revised terms of reference are continuing. Currently, there are seven regional branches, in Bangkok, Entebbe, Geneva, Goma, Nairobi, Santiago and Vienna. Each branch is headed by a regional ombudsman.

B. Formal system

24. The most important changes, however, concerned the formal part of the justice system. The new system replaced a system that consisted of peer review bodies,[10] which gave advice to the Secretary-General before a final decision was taken. That final decision could be challenged before the United Nations Administrative Tribunal, which was composed of external and independent judges. In 2006, the Redesign Panel concluded that "the administration of justice in the United Nations is neither professional nor independent. The system of administration of justice as it currently stands is extremely slow, underresourced, inefficient and, thus, ultimately ineffective. It fails to meet many basic standards of due process established in international human rights instruments".[11]

25. The new formal system consists of the Management Evaluation Unit and a two-tier judicial system: the United Nations Dispute Tribunal and an appellate court, the United Nations Appeals Tribunal.

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[9] Renamed as an ombudsman in 2009.

[10] Joint appeals boards, joint disciplinary committees and panels on discrimination and other grievances.

[11] See A/61/205, para. 5.

26. The General Assembly also decided[12] to establish the Office of Administration of Justice, comprising the Office of the Executive Director the Office of Staff Legal Assistance and the Registries for the Tribunals. It also established the Internal Justice Council.

Management Evaluation Unit

27. The Management Evaluation Unit[13] was established with effect from 1 July 2009. It replaced the former administrative review process. Its mandate is described in an internal instruction.[14] Its core function is to conduct an impartial and objective evaluation of non-disciplinary administrative decisions contested by staff members of the Secretariat.[15]

28. The evaluation process is intended to allow an opportunity for management to correct flawed administrative decisions and to provide executive heads with a tool to hold managers accountable for their decisions. The Unit makes recommendations to uphold, partially uphold, reverse or settle a contested decision. The final decision is taken by the Under-Secretary-General for Management.

29. The management evaluation process may also generate recommendations on accountability measures and policy issues. In addition, the Unit provides feedback to managers at all levels, individually and collectively, regarding its observations of systemic issues and trends.

30. The Unit is also mandated to propose means of informally resolving disputes between staff members and the respondent units, including recommendations for compensation. If an administrative decision is upheld, the staff member receives a written reasoned response.

31. Staff rule 11.2 (d) provides that the Secretary-General's response, reflecting the outcome of the management evaluation, must be communicated in writing to the staff member within 30 calendar days of receipt of the request if the staff member is stationed in New York, and within 45 calendar days if otherwise. When efforts at informal resolution are carried out with the assistance of the Office of the United Nations Ombudsman and Mediation Services, the deadlines are suspended.

32. The Unit, functioning as a separate unit within the Department of Management, consists of a chief, four legal officers and three administrative assistants. The Unit reports twice a year on its activities. The Under-Secretary-General for Management sends the reports to all heads of departments and offices, executive officers and chiefs of administration.

33. Between 1 July 2009 and 31 December 2014, the Unit received 4,874 evaluation requests.[16] In 2014 alone, 1,541 requests were received, but more than half concerned two groups, each with similar requests.

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[12] Resolution 62/228.

[13] Ibid.

[14] ST/SGB/2010/9.

[15] The funds and programmes having kept the old system of administrative review.

[16] More data and statistics on the Management Evaluation Unit, the Office of Staff Legal Assistance, the Tribunals and the Office of Administration of Justice can be found in the annual reports of the Secretary-General on the administration of justice at the United Nations, the most recent of which is A/70/187.

34. In 2014, around 25 per cent of the decisions based on Unit recommendations were challenged before the Dispute Tribunal, most of them consisting of one of the two groups mentioned above. In 2013, this figure was 13.6 per cent.

Office of Administration of Justice

35. The Office of Administration of Justice was established by the General Assembly.[17] It is based in New York. It comprises the Office of the Executive Director and the Office of Staff Legal Assistance, together with the Registries for the three Dispute Tribunal locations and the United Nations Appeals Tribunal. The Office of the Executive Director consists of the Executive Director, the Principal Registrar, a special assistant and an administrative assistant.

36. The organization and terms of reference of the Office are laid down in an internal instruction (ST/SGB/2010/3). It stipulates that the Office is an independent office responsible for the overall coordination of the formal system of administration of justice, and for contributing to its functioning in a fair, transparent and efficient manner.

37. In this regard, the Office provides substantive, technical and administrative support to the Tribunals through their Registries, assists staff members and their representatives in pursuing claims and appeals through the Office of Staff Legal Assistance and provides assistance, as appropriate, to the Internal Justice Council. The Executive Director reports to the Secretary-General regarding the work of the Office and is responsible for the management and administration of the Office, for ensuring efficiency, transparency and accountability in the work of the Office and for the management of the human and financial resources of the Office.

Executive Director

38. The Executive Director advises the Secretary-General on systemic issues relating to the administration of internal justice, including by recommending changes to regulations, rules and other administrative issuances that would improve the functioning of the system.

39. He or she prepares reports of the Secretary-General to the General Assembly on issues relating to the administration of justice; liaises, as appropriate, on those issues with other offices; and represents, as necessary, the Secretary-General at meetings of intergovernmental bodies, international organizations and other entities on issues of administration of justice.

40. Lastly, the Executive Director is responsible for disseminating information regarding the formal system of administration of justice.

Office of Staff Legal Assistance

41. The Office of Staff Legal Assistance was established to succeed the Panel of Counsel, which consisted of peer volunteers.[18] It began its work on 1 July 2009. The Office is composed of professional legal staff, but the General Assembly has encouraged staff representatives and the Secretary-General to develop incentives to

[17] Resolution 62/228, para. 10.

[18] Ibid., para. 13.

enable and encourage staff to continue to participate in the work of the Office, including by providing volunteer professional legal counsel.

42. The Office of Administration of Justice has established a voluntary trust fund to support the mandate of the Office of Staff Legal Assistance. In 2013, the General Assembly decided that the funding of the Office of Staff Legal Assistance would, on an experimental basis, be supplemented by a voluntary payroll deduction.[19] Staff have the possibility to opt out of the scheme. The opt-out rates vary by duty station and organizational unit, but are significant.

43. The organization and terms of reference of the Office of Staff Legal Assistance are laid down in an internal instruction (ST/SGB/2010/3). It is based at Headquarters, with one legal officer in Addis Ababa, Beirut, Geneva and Nairobi.

44. The Office of Staff Legal Assistance is headed by a chief who, without prejudice to his or her responsibility to provide legal assistance to staff members in an independent and impartial manner, is accountable to the Executive Director of the Office of Administration of Justice. He or she is responsible for the management and proper functioning of the programme of legal assistance to staff members in the internal justice system, including in administrative, disciplinary and appellate proceedings before the Tribunals.

45. The legal officers regularly give presentations at their respective duty stations and other locations on the system of justice, including the role of the Office of Staff Legal Assistance.

46. Legal officers have a responsibility to act in the interest of their clients. Their actions are governed by a code of conduct. They provide advice and, when necessary, represent their clients before the Management Evaluation Unit and/or the Tribunals. The Office of Staff Legal Assistance actively pursues the settlement of cases, in particular before the Unit.

47. From 1 July 2009 to 31 December 2014, the Office received 4,853 cases (including cluster cases). In almost 60 per cent of the cases, the Office provided summary legal advice. It provided legal assistance before the Dispute Tribunal in 12 per cent of the cases and before the Appeals Tribunal in 3 per cent. Currently, some 25 per cent of the applicants before the Dispute Tribunal are represented by the Office and more than 50 per cent are self-represented.

Tribunal Registries

48. The Principal Registrar is accountable to the Executive Director of the Office of Administration of Justice. Without prejudice to the authority of the judges in relation to judicial matters, he or she is responsible for overseeing the activities of the Registries of the Tribunals.

Registrars

49. The Dispute Tribunal has three Registries, one in each of its locations. Each is headed by the Registrar, who, under the authority of the Principal Registrar, is responsible for the management and proper functioning of the branch of the Tribunal at the relevant duty station.

[19] See resolution 68/254, para. 33.

50. The Registry of the Appeals Tribunal is located in New York. Its Registrar has, under the authority of the Principal Registrar, similar functions as those of Dispute Tribunal Registrars.

Tribunals

Dispute Tribunal

51. The statute of the Dispute Tribunal was adopted by the General Assembly in 2008.[20] It began its work on 1 July 2009.

52. The Dispute Tribunal sits in three locations: Geneva, Nairobi and New York. Each location has a registry and a courtroom. In each location there is a permanent judge and, provisionally, an ad litem judge. The Tribunal also has two half-time judges who are dispatched to one of the locations taking into account the caseload. The Tribunal has adopted its own rules of procedure, which were approved by the General Assembly. It elects its President from among the permanent full-time judges for a term of one year. Cases before the Tribunal are normally considered by a single judge, but the President of the Appeals Tribunal may, following a written request by the President of the Dispute Tribunal, authorize the referral of a case to a panel of three judges of the Dispute Tribunal, when necessary, by reason of the particular complexity or importance of the case. Cases referred to a panel of three judges are to be decided by a majority vote.

53. Staff wishing to appeal against an administrative decision must lodge their application with the Registry, taking into account geographical assignment. Currently, staff serving in Europe and Asia (including the Pacific) must file their case in Geneva, those in Africa and the Arabian Peninsula (including Iraq, Israel, Jordan, Lebanon, the State of Palestine and the Syrian Arab Republic) in Nairobi and those in the Americas and the Caribbean in New York. Each case is then assigned to the appropriate registry. Parties may apply for a change of venue.

54. The Secretary-General is represented before the Dispute Tribunal by the Administrative Law Section of the Office of Human Resources Management or the regional office of that Section in Geneva, Nairobi or Vienna, or the respective funds and programmes, as applicable. The Section represents the Organization in all disciplinary cases.

55. As a transitional measure from the former system, the Dispute Tribunal heard and passed judgment on 169 cases transferred from the former joint appeals boards and joint disciplinary committees and 143 from the United Nations Administrative Tribunal.

56. Between 1 July 2009 and 31 December 2014, the Dispute Tribunal received 710 cases in Geneva, 532 in Nairobi and 594 in New York. During the first five years, it received on average somewhat less than 300 cases per year. In 2014, the figure was more than 400. It disposed of 1,510 cases, rendering 1,070 judgments (370 in Geneva, 323 in Nairobi and 377 in New York). A total of 317 cases were pending as at 31 December 2014. By comparison, the United Nations Administrative Tribunal issued 1,499 judgments in its almost 60 years of existence. The Dispute Tribunal has issued 3,834 orders. On average, around 39 per cent of the

[20] Resolution 63/253. It was amended in resolution 69/203 in 2014.

cases are lodged by women. It is recalled that the overall percentage of female staff of the all-staff population is 34.1 per cent.[21]

57. Most cases are lodged by staff in the Professional or higher categories and Field Service staff, with a peak of 63 per cent in 2012. The figure fell to 33 per cent in 2014. Staff in the General Service category accounted, on average, for somewhat more than 20 per cent of the cases in the first four years, but the figure rose to 31 per cent in 2013 and to 40 per cent in 2014. It is recalled that 64 per cent of the staff are in the General Service category. The largest number of cases concerns appointment-related issues, followed by benefits and entitlements.

Appeals Tribunal

58. The statute of the Appeals Tribunal was adopted by the General Assembly in 2008 in its resolution 63/253 and amended in resolutions 66/237 and 69/203. It began its work on 1 July 2009 and rendered its first judgment in 2010.

59. The Appeals Tribunal is composed of seven judges and is based in New York, but it may hold sessions in Geneva or Nairobi if required by its caseload. It held its first session in 2010. It currently holds three two-week sessions per year, two in New York and one summer session in Geneva. The outcomes of the cases are publicly announced at the end of each session, but the full judgments are issued later, about six weeks after the sessions. The Registry is established in New York.

60. The Appeals Tribunal has adopted its own rules of procedure. Its Bureau, elected annually, consists of a president and two vice-presidents.

61. Cases before the Appeals Tribunal are normally reviewed by a panel of three judges and are decided by a majority vote. Where the President or any two judges sitting on a particular case consider that the case raises a significant question of law, they may, at any time before the judgment is rendered, refer the case for consideration by the entire Tribunal. The quorum in such cases is five judges.

62. The Appeals Tribunal is competent to hear and pass judgment on an appeal filed against a judgment rendered by the United Nations Dispute Tribunal or the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA),[22] in which it has asserted that the respective Tribunal has:

(a) Exceeded its jurisdiction or competence;

(b) Failed to exercise jurisdiction vested in it;

(c) Erred on a question of law;

(d) Committed an error in procedure, such as to affect the decision of the case; or

(e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

[21] See A/69/292.

[22] UNRWA has its own dispute tribunal, which is modelled after the United Nations Dispute Tribunal but is not part of it. It became operative on 1 June 2011. It serves some 30,000 employees. It had, until 31 December 2014, received 356 cases, including 162 that were pending as at 1 June 2011. It had issued 177 judgments, 47 of which were appealed against.

63. The Appeals Tribunal is also competent to hear and pass judgment on an appeal against a decision of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board. Furthermore, it is competent to hear and pass judgment on an application filed against an agency, organization or entity, where a special agreement has been concluded between the entity concerned and the Secretary-General to accept the terms of the jurisdiction of the Tribunal. Such special agreement may be concluded only if the agency, organization or entity utilizes a neutral first-instance process that includes a written record and a written decision providing reasons, fact and law. To date, the following entities have entered into such an agreement: the International Civil Aviation Organization, the International Court of Justice, the International Maritime Organization, the International Seabed Authority and the International Tribunal for the Law of the Sea.

64. The Secretary-General is represented by the Office of Legal Affairs at the Appeals Tribunal level. UNRWA and the agencies represent themselves.

65. As at 31 December 2014, the Appeals Tribunal had received 686 cases and disposed of 585 of them. It had rendered almost 500 judgments and issued somewhat more than 200 orders. It had held 21 hearings.

66. Both appellants and respondents may appeal. With regard to appeals concerning Dispute Tribunal judgments, 422 appeals concerned 408 judgments. Of those 422 cases, 267 appeals were filed by staff members, of which 23 were closed administratively or upon withdrawal. Of the remaining 244 appeals, staff members were successful in full or in part in 51 and unsuccessful in 193. The Secretary-General filed 155 appeals, of which 3 were closed administratively or upon withdrawal. Of the remaining 152 appeals, the Secretary-General was successful in full or in part in 104 and was unsuccessful in 48.[23]

67. The Appeals Tribunal's caseload appears rather stable at around 140 cases per year. It has to be noted, however, that the number of interlocutory motions is increasing, reaching 84 in 2014.

Internal Justice Council

68. To further ensure independence, professionalism and accountability in the system of administration of justice, the General Assembly decided[24] to establish by 1 March 2008 a five-member internal justice council consisting of a staff representative, a management representative and two distinguished external jurists, one nominated by the staff and one by management, and chaired by a distinguished jurist chosen by consensus by the four other members.

69. The General Assembly entrusted the Council with the following tasks:

(a) Liaise with the Office of Human Resources Management on issues relating to the search for suitable candidates for the positions of judges, including by conducting interviews as necessary;

[23] In 2013, both staff and the Secretary-General each lodged half of the appeals; in 2014, 65 per cent were lodged by staff and 35 per cent by the Secretary-General.

[24] Resolution 62/228.

(b) Provide its views and recommendations to the General Assembly on two or three candidates for each vacancy in the Tribunals, with due regard to geographical distribution;

(c) Draft a code of conduct for the judges, for consideration by the General Assembly;

(d) Provide its views on the implementation of the system of administration of justice to the General Assembly.

70. Lastly, it decided that the Council was to be assisted, as appropriate, by the Office of Administration of Justice.

71. In addition to this general mandate, the Council has performed a wide range of specific tasks as requested by the General Assembly.

72. The Council reports annually to the General Assembly. Annexed to those reports are the views of the judges of the Tribunals.

III. Stakeholders' views on the functioning of the system of justice

73. The Panel convened nine consultation sessions, in New York, Vienna, The Hague, Santiago, Geneva, Entebbe, Goma and Beni (both duty stations for staff serving in the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO)) and Nairobi, during which 124 consultation meetings, including videoconferences and teleconferences, were held with a wide range of actors involved in both the formal and informal systems of administration of justice in the Secretariat, the funds and programmes, staff representatives, management and other relevant offices.

74. Throughout the consultation process, the Panel received a wide range of varying and sometimes conflicting views about the functioning of the system as a whole and suggestions for improvement. The views and contributions are parsed by the specific objectives and the parts of the system.

Overall functioning of the system of justice

75. In general, there was broad agreement that the new system was an improvement on its predecessor. Many stakeholders described it as more streamlined and professionalized. Others noted that it had increased managerial accountability, empowered staff members to seek redress and addressed their concerns. There was general acknowledgement, however, that the system was still evolving and that in some areas its functioning could be improved.

76. At the other end of the spectrum, some stakeholders had a different view of the impact of the new system as a whole. Some staff members expressed distrust in the system, arguing that it was unable to deliver impartial and effective justice because it was "controlled by the Administration". They expressed frustration with what they perceived as a failure by the Administration to comply with the decisions of the Tribunals, the low compensation awards, the lack of protection from retaliation and the failure of the Administration to act against managers who had acted in blatant violation of United Nations rules and regulations. One stakeholder proposed that

staff members who were dissatisfied with the decisions of the internal justice system should have recourse to appeals mechanisms in host countries under local law.

77. Some managers also expressed distrust in the system, which they suggested was skewed in favour of staff members. They argued that the new system had created a chilling effect on their work because they were afraid of being hauled before the Tribunals by litigious staff for taking action against non-performing staff. A few suggested that the system had become too "legalistic" and that that it promoted a "litigious" culture.

78. Many stakeholders observed that unless the underlying causes of conflicts in the workplace and litigation were addressed the system was bound to fail.

Independence

79. The independence of the Tribunals and the perception of their independence were flagged by many as a key concern. Some stakeholders were of the view that the current organization and structure of the system of administration of justice, including the administrative management of the Tribunals and the Registries, created a perception that the Tribunals were under the direct authority of the Administration. The co-location of the Tribunals and the Registries on the same floor as the Office of Administration of Justice in New York was highlighted as being particularly problematic. The Panel heard that in one instance a complaint against a judge and feedback on some judgments had erroneously been channelled to the judges through the Executive Director of the Office.

80. The set standard of remuneration of the judges at the D-2 level was also seen as contributing to that perception, given that that "ranking" within the United Nations staff grading system appeared to place them in a "junior" position to senior staff members within the Secretariat, such as Assistant Secretaries-General and Under-Secretaries-General.

81. Furthermore, the system of ad litem judges whose contracts were extended on a yearly basis was also seen as inimical to judicial independence. Although those judges were initially appointed for a year to address the backlog created within the old system, they have since been renewed on a yearly basis, whereas it is clear that they are required in the longer term. Stakeholders considered the security of tenure of the judges to be vital to securing the independence of the system.

82. That the Tribunals reported to the General Assembly through the Internal Justice Council was also considered to be undermining and limiting their independence. Some stakeholders considered it an anomaly that the judges had no direct reporting line to the Assembly while the Administration (as the executive) had full and unlimited access. They recommended that an open and "uncensored" channel should be established for the reports of the Tribunals to the Assembly.

83. While recognizing the important role of the General Assembly as the legislative organ of the United Nations responsible for promulgating the statutes governing the Tribunals, some stakeholders considered recent amendments to the statutes to be attempts to limit and control the authority of the Tribunals. They remarked that the recent amendment to the statute of the Dispute Tribunal to require

evidence for moral damages was made in reaction to the judgment in *Ademagic et al.*[25]

84. Beyond the Tribunals, stakeholders also pointed out other elements of the system of administration of justice whose functioning was affected by a lack of independence. Notably, the placement of the Office of Staff Legal Assistance under the authority of the Executive Director of the Office of Administration of Justice, an integral part of the Administration, was viewed by some as an impediment to the independent exercise of its function. Some staff members perceived the Office of Staff Legal Assistance as being part of management because its lawyers were employees of the Organization and dependent on the Secretary-General, citing a case in which a lawyer from the Office was represented before the Dispute Tribunal by the respondent's counsel as an example.[26]

85. Many stakeholders also considered the placement of the Management Evaluation Unit within the Department of Management to be undermining the independent and impartial functioning of the Unit. They expressed the view that the Unit, which was tasked with conducting an impartial and objective evaluation of administrative decisions contested by staff members, should not only be impartial but also be seen to be so and that it required a measure of independence in order to function effectively and efficiently.

Transparency

86. While recognizing that the current system of justice was more transparent than its predecessor, several stakeholders identified areas in which there was scope for improvement. The Panel heard concerns from several stakeholders about the functioning of the search engine, which they considered to be outdated, difficult to use and imprecise. Those deficiencies, they said, hampered access to jurisprudence and research. A suggestion was made to issue the judgments of the Tribunals as official documents in the Official Document System, as was the case with the judgments of its predecessor, the United Nations Administrative Tribunal, in order to make them more readily available.

87. Stakeholders noted that, although the Tribunals held public hearings, there was little visibility of their work and little effort was invested in making the hearings known to staff. In one duty station, for example, the Panel was informed of attempts by management to hinder knowledge of the system by discouraging staff from attending hearings.

88. Some stakeholders also voiced concern over what they considered to be a lack of transparency in the review process of the Management Evaluation Unit. They indicated that the Unit did not share the documents associated with its decisions with staff members, thereby making it difficult for staff and their legal representatives to assess whether their case had a reasonable chance of success. The management evaluation decisions of the agencies, funds and programmes were also said to be lacking in reasoning. Some suggested that the Unit's decisions should be made public.

89. While there was broad support for the work being performed by the Office of Staff Legal Assistance, some staff members considered the lack of clear criteria for

[25] UNDT/2012/131.

[26] See *Oummih* (UNDT/2013/044).

the Office's intake or dismissal of cases to be a lack of transparency. They pointed out that many cases rejected by the Office subsequently succeeded before the Tribunals after being taken up by private counsel.

90. Another issue raised in relation to transparency was the reluctance of the Administration to furnish staff with the relevant information to file their cases. The Panel was informed that the vast majority of requests by staff for such information were declined by the Administration and that counsel representing staff were often compelled to obtain a legal order in order to assess the viability of the case before them. Stakeholders recommended that the Secretary-General should establish a mechanism through which staff could readily gain access to information not classified as confidential from the Administration.

Professionalization

91. Stakeholders generally agreed that, in comparison with its predecessor, the new system was more professionalized. They welcomed the professionalization of the bench, but pointed out that the approach of the judges varied by location. The Panel heard from the judges that they recognized the differences and were working towards harmonizing their approach.

92. According to some stakeholders, while the bench has been professionalized the bar is lagging behind. The conduct of the counsel before the Tribunals was reported to be below the required standard. The Panel was informed of instances in which the respondent's counsel had withheld information relevant to a hearing or failed to extend assistance to unrepresented litigants. Stakeholders suggested that a code of conduct should be developed for all counsel appearing before the Tribunals. Not all stakeholders shared that view, however, with some counsel interviewed by the Panel arguing that they were already bound by the codes of conduct of their national jurisdictions.

93. A large number of stakeholders strongly recommended that the Panel should address the issue of investigations into misconduct and harassment. Although not directly part of the system of justice, the Panel heard from numerous stakeholders that the current system of conducting investigations into misconduct did not meet the standard of proof set by the Tribunals. Under the current system established under the Secretary-General's bulletin on prohibition of discrimination, harassment, including sexual harassment, and abuse of authority (ST/SGB/2008/5) and the administrative instruction on disciplinary measures and procedures (ST/AI/371 and Amend.1), certain investigations are conducted by staff members who have received limited training from OIOS. The Panel was informed that the quality of most investigations was poor and that the findings of the investigations were often flawed and consequently disallowed by the Tribunals. The situation has led to many cases in which the Organization has been unable to institute disciplinary proceedings against staff members alleged to have committed blatant wrongdoing and a perception of impunity. Stakeholders strongly recommended that the entire investigation procedure should be revised and that OIOS should conduct all investigations into allegations of misconduct.

Decentralization

94. Several stakeholders were of the view that the system was too "New York-centric" and that there was a need for further decentralization, especially on the part

of the Administration. They pointed out that, although the Tribunals are located in Geneva, New York and Nairobi, other critical parts of the system, such as the Management Evaluation Unit, were centralized in New York, which affected the effective functioning of the system as a whole.

95. The Panel was informed that the vast majority of cases were defended in New York, where many of the respondent's counsel were based. In many cases, the respondent opted to use counsel based in New York to defend cases before the Dispute Tribunal in Nairobi and others involving applicants based in Bangkok. The practice creates great difficulties in scheduling hearings and results in delays owing to the time differences involved.

96. The lack of decentralization on the part of the Administration also affects other aspects of the system. The Panel heard of cases in which negotiations for an informal settlement at duty stations outside New York were held up or failed entirely after an agreement had been reached because all decisions relating to the approval of settlements are made in New York.

97. Stakeholders also suggested that it might be useful for the Tribunals and the Registries to be more mobile and to hold hearings in field locations. Although the branch of the Dispute Tribunal in Nairobi has held a hearing in Kinshasa, the practice appears to be rare. The Appeals Tribunal, for example, has convened no sessions in Africa.

98. The Panel was also informed that the lawyers of the Office of Staff Legal Assistance experienced great difficulty while representing applicants in locations in which there was no branch of the Dispute Tribunal owing to lack of funds for travel. Although they could make use of teleconferencing and videoconferencing facilities, there were limits as to what could be achieved when consulting clients remotely.

Access to justice

99. Consistent with the observations of the Internal Justice Council in its most recent report,[27] the Panel heard from several stakeholders during its visits to the field in Entebbe and the two above-mentioned duty stations of MONUSCO that a number of staff members in the system had no idea that the internal justice system existed or how they could gain access to it. Those claims were confirmed by staff during town hall meetings and by staff members from the Office of Staff Legal Assistance who had conducted outreach missions to deep-field locations.

100. Many stakeholders strongly recommended that more efforts should be invested in outreach activities to inform staff members about the system. The Panel was informed that the outreach efforts of the Office of Administration of Justice had had to be interrupted owing to lack of funding. The Panel learned that staff from the Office of Staff Legal Assistance conducted outreach missions to field missions with funding from peacekeeping operations. Although the lack of awareness of the system was more deeply felt further afield, knowledge of the existence of the various mechanisms of the system and offices where staff could seek assistance was also surprisingly limited in Nairobi, Geneva and New York.

101. Stakeholders also identified the challenges of using the Court Case Management System as an impediment to access to justice. In their view, the

[27] A/70/188, para. 33.

deficiencies in the system seriously hampered access in remote field locations, where Internet access was limited. Besides technological difficulties, language barriers and the complexity of the system created greater constraints and hindered effective access to the system. Stakeholders called for the system to be upgraded to resolve the problem.

102. A significant number of stakeholders voiced concern about the lack of access to the system by interns, consultants and non-staff. They pointed out that many offices and missions relied on volunteers, contractors and consultants. The Panel was informed that those categories of staff were not always able to use the arbitration clause because it did not work well for small contractors. They stressed the need for the Organization to provide effective recourse to all its workers. In their view, the current situation, which granted selective protection to some staff and left out others, undermined trust in the system.

103. Fears of retaliation and intimidation were also cited as factors affecting access to justice. The Panel received information about widespread fear of retaliation and adverse repercussions on the part of staff for using the system. Several users shared experiences of being discouraged from using the system and retaliated against by managers for seeking legal redress.

Rule of law, due process and accountability

Rule of law and due process

104. Stakeholders agreed that in general the new system had empowered staff members to enforce their rights, but expressed concern that resistance by the Administration to the authority and decisions of the Tribunals was threatening to undermine the rule of law within the Organization. The Panel was informed of specific instances in which the Administration had refused or failed to implement orders, including orders of reinstatement and suspension of action, thereby damaging overall trust in the ability of the system to safeguard the rights of staff members.

105. Some stakeholders were concerned that the limited interpretation of the Tribunals' jurisdiction and the narrow interpretation of what constituted an administrative decision had the effect of denying staff effective remedies. They argued that the Tribunals should have the power to review the legality of the Staff Regulations and Rules of the United Nations and the decisions of the International Civil Service Commission and to determine whether they complied with international norms. A recent decision[28] by the Appeals Tribunal to exempt the decisions of the Ethics Office from the scope of administrative review was seen by many as an erosion of the rule of law because it essentially deprived of any redress staff members claiming to have been subjected to retaliation and denied protection.

106. Another concern identified by stakeholders was related to the lack of protection from retaliation. Stakeholders highlighted the need for the Organization to provide support and protection to all staff, including those reporting misconduct or appearing as witnesses. That, they pointed out, was particularly important because staff members had a duty to report any breach of the regulations and rules to the officials whose responsibility it was to take appropriate action. The Panel was

[28] See *Wasserstrom* (2014-UNAT-457).

informed of instances in which protective measures for witnesses made by a judge had been disregarded or violated by the Administration. Some staff members expressed concern that, in some cases, staff who had "won" cases before the Tribunals or reached a settlement agreement with the Administration subsequently had their contracts terminated under the guise of lack of funds, restructuring or post discontinuation.

Due process

107. The Panel also heard from various stakeholders that the Tribunals had been unduly strict in extending time limits for filing cases. That rigidity, they argued, had led to the dismissal of meritorious cases and impeded the rights of staff members to seek redress before the Tribunals.

108. Stakeholders pointed out that an inordinate number of cases were dismissed before the Tribunals on grounds of receivability owing to gaps in the rules and regulations. Under staff rule 11.2 (b), a staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, is not required to request a management evaluation. Although the Secretary-General has not identified bodies that he considers to be technical, staff members are routinely informed that the decisions of various bodies are not receivable by the Management Evaluation Unit because they do not constitute administrative decisions.

Accountability

109. A substantial number of stakeholders highlighted the issue of accountability as a key concern. Pursuant to article 10 (8) of its statute, the Dispute Tribunal may refer appropriate cases to the Secretary-General or the executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability. There was broad sentiment that the system of referrals for accountability was not working well. Many stakeholders decried the failure of the Organization to take action against managers who had been referred to the Secretary-General for accountability. In their view, the failure to impose sanctions against managers even when their conduct had resulted in a financial loss to the Organization meant that there was no disincentive for making bad decisions. They called for the enhancement of the accountability function in order to effect change in the Organization.

110. The Panel heard of examples where substantial losses had been incurred as a result of a manager's (in)action yet no investigation had been undertaken. Some stakeholders suggested that, as a deterrent, managers whose actions had resulted in material damage to the Organization should be requested to contribute financially. Other stakeholders, however, were concerned that, were strict accountability for actions enforced, managers' decisions would be guided by avoidance of liability rather than operational imperatives.

111. The Panel was informed that the Secretary-General had established an ad hoc group to review referrals for accountability and make recommendations for appropriate action. Many stakeholders pointed out, however, that there was an information gap and that no feedback was provided to the Tribunals or staff members on the action taken against the managers concerned.

112. Another section of stakeholders questioned the application of the referral mechanism as a whole. They said that the Tribunals had used the mechanism in the broadest possible manner and that it had evolved into a "criminal" accountability process. They were of the view that some of the referrals were inappropriate and damaging to the reputation of some managers and staff members, especially because the managers and staff members named in referrals were not given an opportunity to defend their actions. They suggested that a mechanism should be established to purge the record when the Organization won a case so as to protect staff members who had been cleared of wrongdoing. They also said that managers referred for accountability should have an opportunity to defend themselves.

113. During their visits to the field, managers told the Panel of their great frustration at their inability to take action against staff members who had committed serious offences owing to the complexity of the disciplinary process. They considered the burden of proof established by the Tribunals, that of "clear and convincing" evidence, to be too high. They stressed that delays in investigating disciplinary cases created a perception of impunity in the field and carried a high reputational risk for the Organization. They called for a balanced approach that would protect staff while safeguarding the capacity of the Organization to hold staff accountable for serious infractions.

Informal system

114. The Panel's assessment centred on the interface between the formal and the informal systems. Stakeholders saw an important role for the informal system in the overall system of justice. There was broad agreement that the United Nations should promote prevention of conflicts and informal mediation. The Panel was informed of continuing efforts to promote informal settlement through referrals by the Tribunals and referrals of staff to the informal system by various offices, including the Office of Staff Legal Assistance, the Management Evaluation Unit and staff counsellors. Several stakeholders, including the Unit, confirmed that they had referred cases to the Office of the United Nations Ombudsman and Mediation Services with positive outcomes. In such cases, the Office seeks adequate time and, where necessary, suspension of time limits for informal settlement to be pursued.

115. The Panel was also informed that there had been a notable upward trend towards dispute resolution as a result of the proactive judicial engagement and that the Tribunals were increasingly referring cases back to mediation and informal settlement through case management.

116. During their field visits, the Panel heard that managers valued the role of the Office of the United Nations Ombudsman and Mediation Services. In one duty station outside New York, managers informed the Panel that they had averted 50 per cent of possible litigation cases by resorting to the informal system. They attributed their success to the engagement of the leadership at the highest level and collaborative communication with the Office in order to identify problems early on.

117. Stakeholders also identified some challenges that they encountered in the interface between the informal and the formal systems and called for greater links between the two. One key challenge was related to the sharing of information between the two systems and what stakeholders viewed as "compartmentalization". The Panel was informed that failure to share information by the Office of the United

Nations Ombudsman and Mediation Services on the status of some cases, on confidentiality grounds, had delayed their progression.

118. In other instances, delays by the Office of the United Nations Ombudsman and Mediation Services in pursuing informal settlements have resulted in cases being time barred. Stakeholders suggested that the time for filing a case before the Management Evaluation Unit should be extended when parties were pursuing an informal solution. The Panel was informed that the Unit and the Office of the United Nations Ombudsman and Mediation Services, with input from the Office of Staff Legal Assistance, were developing a working framework to manage the extension of the deadlines during informal resolution efforts, both before and during management evaluation, pending the enactment of a formal administrative issuance regarding the extension of deadlines pursuant to staff rules 11.2 (c) and (d).

119. A second challenge was related to the enforceability of informal settlements. Stakeholders shared examples of when the Administration had failed to honour mediated agreements after protracted negotiations, thereby undermining the informal system. In some cases, the Administration had argued that the person who had negotiated the settlement on behalf of the Organization had had no authority to do so in the first place.

120. A few stakeholders were of the view that the recommendations of the Office of the United Nations Ombudsman and Mediation Services were not always taken seriously because the Office lacked the authority, or "teeth", to enforce and demand compliance with negotiated settlements. Consequently, some staff members resorted to the formal system because they believed that the Office was not effective. Stakeholders considered it important for the Office to adopt a more proactive approach to resolving conflicts and pursuing informal settlements. Stakeholders also emphasized the need for mediators to have the authority to mediate and reach a settlement.

121. In consultations with representatives of the agencies, funds and programmes, as well as smaller offices, the Panel was informed that they had successfully resolved many of their cases through informal processes. They attributed their success to a pragmatic management style, flexibility in funding and/or early intervention by legal teams. On the other hand, the Secretariat was described as being reluctant to pursue informal settlement and to honour agreements negotiated by the parties. The failure by the Administration to implement negotiated agreements was seen as damaging to the credibility of mediation and informal settlements.

122. A few stakeholders implied that the informal system was underutilized because staff members were unaware of the services that it provided. They proposed intensifying outreach efforts to enhance the visibility of its work, creating incentives to use it and training managers on its benefits.

123. There were varying views about whether mediation should be made mandatory. A few stakeholders suggested that mediation should be made a compulsory first step in the process in order to reduce the number of cases in the formal system. The vast majority of stakeholders, however, objected to the proposal, arguing that such a move would restrict the rights of staff. Moreover, they considered mediation to be more effective when parties were willing to explore solutions.

Management Evaluation Unit

124. The Panel heard divergent views regarding the role and functioning of the Management Evaluation Unit. On the one hand, some stakeholders described the Unit as efficient and having a high success rate. They attributed the increasing number of management evaluation requests to growing confidence and trust in the Unit. They were of the view that, although the Unit was located in the Department of Management, it was able to discharge its functions objectively and impartially. They pointed out that the Unit had resolved many cases and prevented them from proceeding to litigation.

125. On the other hand, other stakeholders questioned the independence and impartiality of the Unit, arguing that it had no authority to make independent decisions owing to its placement within the Department of Management. They were of the view that the Unit was an arm of management that rubber-stamped its decisions. They pointed to the high number of administrative decisions upheld by the Unit as evidence of its lack of impartiality. Moreover, they indicated that the vast majority of management evaluation requests were rejected as inadmissible. They recommended that the Unit should be abolished or "fundamentally reformed" to guarantee its independence and impartiality. It was suggested that the Unit should be headed by someone external to the United Nations.

126. Several stakeholders expressed concern at some practices of the Unit that they considered to be inconsistent with its terms of reference. The Panel was informed that, although the Unit was tasked with reviewing the lawfulness of administrative decisions on behalf of the Secretary-General, it rarely declared decisions illegal. Instead, when it determined that a decision was unlawful, it requested the decision maker to change it and declared the management evaluation request "moot". That practice, in their view, promoted impunity and undermined trust in the system.

127. Another practice brought to the attention of the Panel concerned cases involving applications for suspension of action. Under staff rule 11.3 (b) (i), a staff member may apply to the Dispute Tribunal to suspend the implementation of a contested administrative decision until the completion of a management evaluation. Some stakeholders informed the Panel that the Unit had adopted a practice of expediting the review process and issuing a decision before the suspension of action hearing was held or immediately after such an order was issued. They argued that the practice had the effect of depriving staff of interlocutory relief. Stakeholders considered the practice to be a deliberate attempt by the Unit to deprive the Tribunal of its jurisdiction under article 13 of its rules of procedure, noting that, under normal circumstances, Unit decisions were issued at least 45 days (30 days for staff members based at headquarters duty stations) after the filing of a management evaluation request. They also deplored the fact that, in general, the Unit did not always comply with the deadline for issuing its decision.

Office of Administration of Justice

Executive Director

128. While acknowledging the important role of the Office of Administration of Justice in coordinating the overall system of justice, stakeholders observed that there was an inherent conflict of interest within the system because the Office was served and administered by the Executive Office of the Secretary-General.

129. Some stakeholders commented that in New York the physical layout and proximity of the Tribunals, the Registries and the Office of Administration of Justice contributed to a perception of interference by the Office. The Panel was informed that the Executive Director of the Office played an administrative rather than a substantive role in the work of the Registries. Some stakeholders, however, considered the situation to be "not ideal" and stated that it placed the staff of the Registries in a "difficult" position.

Office of Staff Legal Assistance

130. The overwhelming majority of stakeholders agreed on the unique and important role of the Office of Staff Legal Assistance in the system of justice. They described its lawyers as professional and effective. The Panel heard from various staff members who had received assistance from the Office that the support proffered had been professional and helped them in resolving their cases. Other offices working closely with the Office also praised its professionalism and effectiveness. They saw a distinct advantage in having lawyers from the Office with good knowledge of the rules and regulations of the Organization representing staff. Staff and managers involved in the system of administration of justice indicated that, beyond providing legal advice and representation to staff members, the Office played an important role as a "filter" for frivolous cases.

131. The Panel was informed that since 2009 the Office had provided assistance to staff in some 5,000 cases. The assistance provided included summary legal advice; advice and representation during informal dispute resolution and formal mediation; assistance with the management evaluation review and during the disciplinary process; and legal representation of staff before the Tribunals and other recourse bodies.

132. Stakeholders lamented, however, that the Office was woefully underresourced, with only 10 legal officers serving more than 70,000 staff members. The lack of adequate resources, in their view, was an impediment to fair and adequate legal representation for staff, especially those at non-headquarters duty stations. They were concerned that the Office might be compelled to dismiss some cases because of its limited capacity and called for an increase in its staffing commensurate with its workload and the number of clients in order to secure equality of arms. Many stakeholders remarked on the stark difference between the number of lawyers representing the Administration and the overall staffing of the Office. The Panel was informed that the number of legal officers representing the Administration was approximately four times higher than the total number of lawyers in the Office.

133. The Panel also heard some criticism of the Office from various stakeholders who considered it to be pro-management. They pointed to the fact that the Office's lawyers were paid for by management and defended by lawyers for the Administration as a conflict of interest. Some stakeholders suggested that that perception might be a contributing factor to the high number of self-represented applicants before the Tribunals. Some stakeholders found the staffing structure of the Office problematic, noting that there was no clear career path. The Panel was informed that the Office had no P-4 positions. Consequently, several lawyers from the Office who were seeking promotion had moved to work elsewhere in the Administration, including in the Office of Legal Affairs. That crossover was considered by some to be contributing to the perception that the Office's lawyers

were pro-management or hesitant to challenge management decisions lest they jeopardized their career prospects.

134. Concern was also expressed about the lack of clear criteria for the Office's acceptance or rejection of cases. Stakeholders mentioned that some cases rejected by the Office had succeeded before the Tribunals when taken up by other lawyers or even when staff members had chosen to represent themselves. Some staff members said that the Office was unwilling to take on complex or politically sensitive cases and that it took on only cases that it could win. The Panel was informed that the Office did not keep track of the cases that it had rejected to determine whether they had ultimately succeeded before the Tribunals.

135. A few stakeholders termed the placement of the Office under the Office of Administration of Justice an "inappropriate" arrangement and suggested that the latter should not be responsible for the recruitment of the former's staff. They also commented on the profile of the staff of the Office of Staff Legal Assistance and suggested that the Office should enhance gender, language and geographical diversity in order to be more effective in representing staff.

136. Stakeholders differed on the voluntary funding scheme, which invites staff members to pay 0.05 per cent of their salary to fund the Office. Many found the scheme problematic and stated that it contravened the Charter of the United Nations, which determined that all United Nations offices must be funded by United Nations funds. Others said that it was unfair for staff to be requested to fund an entity over which they had no control. A suggestion was made to limit the Office's services to General Service staff and staff members who lacked the resources to procure a legal defence. They noted that many staff members chose to represent themselves, notwithstanding the free services offered by the Office. Other stakeholders suggested that staff members should explore the establishment of a legal funding scheme independent of the Administration. Such a scheme, which would entail staff contributing to a subsidized system, would, in their view, redress the current inequality of arms. It would also enable staff members to procure legal services from lawyers of their choice who would be answerable to them rather than relying solely on the Office.

Registries

137. There appeared to be general agreement on the important role of the Registries in supporting the functioning of the Tribunals. Some stakeholders, however, said that the support system was not well articulated. They were also concerned that judges were not always involved in the selection process of the Registrars, including the Principal Registrar, and recommended that the judges should be consulted.

138. Several stakeholders indicated that the role of the Principal Registrar was not clear and suggested the development of clear terms of reference for the position. The Panel was informed that the Principal Registrar served dual functions as the Deputy Executive Director of the Office of Administration of Justice and the Principal Registrar. Some stakeholders saw a potential conflict of interest in the execution of the dual function and called for a reconfiguration of the role.

Tribunals

139. There was general agreement among stakeholders about the value of the two-tier system of justice and the important role played by the Tribunals in shaping the system through jurisprudence. The existence of an appellate tribunal reviewing the work of the tribunal of first instance was seen as a positive feature that promoted better-quality justice. Stakeholders, however, flagged several concerns about both Tribunals and recommended some measures that in their view would further strengthen their role and enhance the effective functioning of the system.

Dispute Tribunal

140. Stakeholders stated that the practices and procedures of the Dispute Tribunal varied by duty station and that parties did not know what to expect. While some judges held oral hearings whenever there were disputed issues of fact, the holding of hearings by others was described as "the exception, rather than the norm", including in disciplinary cases where there were serious factual contentions. Similarly, the Panel heard that, although some judges convened case management hearings as a practice, others did not consider them to be essential. Some stakeholders described the current framework as "loose" and vulnerable to the personalities of the judges. They stressed the need for the development of detailed rules of procedure to provide clear guidance to the parties and greater coherence in the system. The Panel was informed that the judges of the Tribunal were working towards greater harmonization in their approach through the issuance of guidelines and practice directions.

141. Linked to the foregoing, several stakeholders were concerned about the disparity in the jurisprudence of the Tribunals. The Panel heard of instances in which the judges of the Dispute Tribunal had disregarded the judgments of the Appeals Tribunal. That was largely attributed to the fact that the system was young and still evolving.

142. Although stakeholders agreed that the current system was swifter and more efficient than its predecessor, the Panel heard concern about increasing delays by the Dispute Tribunal in disposing of cases before it. Stakeholders recommended that deadlines should be established for the issuance of judgments in the code of conduct for judges or in the rules of procedure. Several stakeholders also noted that there was no system in place to process manifestly unfounded cases, which in their view clogged up the system. They suggested that a fast-track procedure should be established to weed out frivolous cases in order to free up the Tribunal's time for addressing valid and serious claims. A few individuals recommended that there should be some form of penalty for filing a frivolous case, suggesting that a system of filing fees might have a deterrent effect. Others, however, were of the view that imposing filing fees would impede access to justice and suggested that the Tribunal should instead order the payment of costs in such cases.

Appeals Tribunal

143. Several stakeholders expressed dissatisfaction with the working arrangements of the Appeals Tribunal, which they felt had an adverse impact on the quality of its judgments. The Panel was informed that the Tribunal held two-week sessions three times a year, during which it deliberated and rendered at least 35 decisions per session. Some stakeholders questioned whether the judges had sufficient time to

comprehensively review the judgments before taking decisions within such a short time frame.

144. The Panel heard that requests made to the judges to extend the sessions were not successful because most judges serving at the Appeals Tribunal held full-time appointments in their national jurisdictions and could not make themselves available for longer periods. In addition, the Tribunal had no system in place to address interlocutory motions when it was not in session. The Panel was told that in the past the President of the Tribunal would deal with such motions, but more recently they had been deferred to the next session. Several stakeholders proposed the establishment of a full-time court or that the judges of the Tribunal should be drawn from a pool of retired judges. They also called for the establishment of a duty judge system to deal with interlocutory motions.

145. A more significant concern raised by stakeholders was related to the lack of consistency in jurisprudence. Several decisions in which the Tribunal had issued contradictory rulings on important matters such as the remand of cases, redaction of judgments, anonymity and compensation awards were brought to the attention of the Panel. The Panel heard that, although the Appeals Tribunal had previously stated that the Dispute Tribunal had an "unquestioned discretion and authority to quantify and order compensation under article 10 (5) of its statute for violation of the legal rights of a staff member" (see UNDT/2011/081), it had subsequently reduced the amount of compensation awarded by the Dispute Tribunal in a number of cases without providing clear explanations. Stakeholders noted that that discordance in the jurisprudence of the Tribunals undermined the integrity of the system as a whole. They stressed the need for the Appeals Tribunal to be consistent in order to guide the lower court and the overall jurisprudence of the justice system.

146. There was a perception by many stakeholders that the Appeals Tribunal was pro-management. Several stakeholders pointed to the high number of decisions of the Dispute Tribunal overturned by the Appeals Tribunal without sufficient reasoning as evidence of that bias. Some stakeholders said that the Appeals Tribunal did not meet sufficiently frequently and that it was removed from the realities of the system as a whole because of its part-time working arrangement.

147. A significant number of stakeholders lamented that the judgments appeared to lack "analysis and adequate reasoning" and failed to provide guidance for prospective applicants and the system as a whole. They pointed to the "paucity" in reasoning as an indication that the Appeals Tribunal was more inclined to rule in favour of the Administration and lower compensation awards. The Panel heard that close to 70 per cent of Dispute Tribunal decisions tended to be overturned on appeal. Other stakeholders, however, saw that high rate of reversal as indicative of problems in the judgments of the Dispute Tribunal.

148. A few stakeholders considered the system of remuneration for the judges problematic. The Panel was informed that the judges were remunerated on the basis of the number of judgments that they delivered and that they received no payment for performing additional tasks. They were concerned that that mode of remuneration had an impact on the quality of orders and had the potential to create the wrong incentives for reversing decisions, thereby undermining trust in the system.

Internal Justice Council

149. There was broad appreciation of the important role of the Internal Justice Council in monitoring and overseeing the implementation of the system. Some stakeholders stressed the importance of providing institutional guarantees of independence for the Council and suggested that its mandate and role should be clarified.

Identification of key causes for disputes and possible solutions; dispute avoidance and early resolution

150. Stakeholders identified various causes of workplace conflicts and litigation and highlighted the importance of addressing them. One of the constant causes of ligation that was identified by stakeholders was the vagueness and complexity of the legal framework within which the justice system worked. Managers and staff alike indicated that the Staff Regulations and Rules of the United Nations, Secretary-General's bulletins, administrative instructions, information circulars and other administrative issuances were incoherent, vague, complex and difficult to interpret. Furthermore, the Panel was informed that managers did not receive adequate support or guidance on how to implement the rules. They noted that poorly drafted provisions in some of those legal documents created ambiguity and left room for multiple interpretations. For example, there was no clarity as to when a staff member could be placed on leave with or without pay. Stakeholders noted that many problems could be averted if the rules were clearer. They stressed the need for a comprehensive review of administrative issuances to eliminate opaque and ambiguous provisions and a consolidation of all rules into a single accessible document.

151. The Panel also heard that many disputes before the Tribunals stemmed from bad managerial practices and, in some cases, blatant mistakes by managers. Stakeholders attributed that to a lack of accountability, noting that there was no incentive for good management and no disincentive for bad management. One stakeholder described the management culture as "overcautious" to the extent that egregious management practices were never addressed. Another remarked that management delegated its problems to the justice system. They highlighted the importance of examining the system of justice in the context of the management culture as a whole. Some stakeholders observed that there was no mechanism to build skills for good management and described the training offered to managers as "deficient". They recommended that training on critical management practices, including conflict management and performance review, should be provided to managers at all levels and that accountability should be enhanced.

152. Linked to the foregoing, some stakeholders identified a lack of transparency in management as a leading cause of litigation. The Panel was informed that in many cases staff members resorted to the justice system because of the failure by some managers to provide reasons for taking administrative decisions. Some stakeholders observed that there was a "widespread culture of secrecy" in the Organization. Consequently, managers did not feel obliged to justify their actions even when required to do so.

153. Staff members also stated that administrative procedures were difficult and complex. During the field visits, staff complained about a lack of information on their benefits and entitlements and that administrative processes were slow and

cumbersome. Those factors, coupled with the difficult working environment, often contributed to frustration and workplace conflict.

154. The staff performance evaluation system was identified as one of the most problematic issues in the United Nations system. Several managers complained that their hands were tied when dealing with non-performing staff members. They stated that the rebuttal process was often used to block candid evaluations of non performing staff. Consequently, performance improvement plans were rarely implemented and bad performance was not penalized. Staff members also complained about the misuse of the performance evaluation system by managers in order to lay off staff members who were not in their favour. The Panel heard of cases in which managers had failed to perform staff evaluations for up to seven years. Several stakeholders suggested that the performance review system should be overhauled or replaced with a more straightforward system based on objective standards of evaluating performance.

155. A substantial number of stakeholders were concerned that no mechanisms were in place to draw lessons from the jurisprudence of the Tribunals and that the rules of the Organization had not evolved in tandem with the jurisprudence. They suggested that the Administration should establish a system of reviewing the jurisprudence and translating it into the rules, policies and practices of the Organization. Many managers welcomed the lessons-learned guide issued by the Management Evaluation Unit in the past as a useful tool and called for its publication to be revived. They indicated that the system as a whole would benefit from the extracting of lessons and the taking of remedial action where gaps in the policies or practices of the Organization had been identified. Beyond lesson learning, some stakeholders suggested that clear guidance on specific actions and specific information should be provided to managers.

156. Lastly, stakeholders appealed for a shift in approach by the Administration and staff stressed the need for the Organization as whole to proactively promote conflict prevention and pursue informal settlement of disputes in order to promote a positive working environment.

IV. Assessment and suggestions for improvement

157. The General Assembly, in paragraph 4 of its resolution 61/261, as reaffirmed in its resolution 63/253, decided to establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike.

158. It is therefore important, before analysing the more detailed elements of the Panel's mandate, to verify whether those main objectives have been met and where improvement is possible and/or necessary.

A. Independence

159. The Redesign Panel suggested that cases should no longer be brought against the Secretary-General, but against the Organization. The Secretary-General would

then be the guardian of the integrity of the internal justice system and protector of the rule of law.[29] That would have entailed an appropriate degree of independence and autonomy for the future Office of Administration of Justice, given that it would have been answerable to the "guardian" of the justice system rather than the respondent before the judicial bodies. The General Assembly agreed to establish the Office of Administration of Justice, but did not change the role of the Secretary-General, entailing some institutional ambiguity.

160. The proposal of the Redesign Panel was not without legal and practical difficulties. First, it is questionable whether the United Nations as a whole could be held responsible for what are essentially labour disputes within the Secretariat (or the executive structures of various funds and programmes). Second, it is not at all clear what would be the legal basis for the persons who took a contested decision to defend that decision on behalf of the Organization. Lastly, the Secretary-General or the executive head of the relevant fund or programme could in some cases be directly responsible for taking a contested administrative decision.

161. The Panel will therefore not reiterate the proposals of the Redesign Panel, but is of the view that the principle of judicial and institutional independence could be strengthened within the current arrangement.

162. The Panel wishes to make it clear, first, that the Secretary-General is not only the respondent before the judicial bodies. He, even more importantly, has a direct interest — and in fact responsibility — as the chief administrative officer of the United Nations to ensure that justice is done and that the internal justice system functions properly. The same applies to the United Nations staff tasked to support that system.

163. The Panel is of the view that there are issues to be addressed and measures to be taken to protect and reinforce judicial independence in the system of administration of justice. The task is not limited to the Tribunals, but includes examining elements of the system, which in the resolutions of the General Assembly and/or the reports of the Secretary-General are referred to as "independent".

164. In doing so, the Panel is mindful that the test for judicial independence is whether the separation of powers between the judiciary, on the one hand, and the executive and legislative authorities, on the other, is ensured. Consequently, the first question is whether the elements of the formal system, which form part of the executive branch, function in a manner that respects the principle of separation of powers.

Management Evaluation Unit

165. The Redesign Panel recommended the complete abolishment of the old process of administrative review before recourse to judicial dispute resolution. The Secretary-General, however, suggested that the old mechanism should be replaced with a properly resourced and strengthened management evaluation function, as a first step in the formal justice system.[30] The General Assembly agreed to establish an independent management evaluation unit in the Office of the Under-Secretary-General for Management.[31] Under the new system, the Unit submits

[29] See A/61/205, para. 123.
[30] See A/61/758, para. 29.
[31] Resolution 62/228, paras. 50-52.

recommendations to the Under-Secretary-General, who acts upon them with delegated authority from the Secretary-General.

166. The Panel notes that the Unit is neither designed nor functions as an entity independent from the Administration. It rather forms part of the Administration and is being tasked to assist it in reviewing a contested decision before the case proceeds to litigation. The Unit may be functioning independently from the managers who have taken the contested decision, but that does not change the fact that the Unit is, without any doubt, an arm of the Administration. It does perform an important function, which is useful both for management and an aggrieved staff member. The arrangement, in the opinion of the Panel, does respect the principle of separation of powers and in no way has an impact on the principle of judicial independence.

Office of Administration of Justice

167. The Redesign Panel recommended the establishment of the Office of Administration of Justice in order to provide for institutional independence for the system of justice and its budgetary and operational autonomy, reporting to the Secretary-General in his proposed role as "guardian" of the justice system.

168. The Office is termed by the Secretary-General as an "independent office".[32] The General Assembly noted the important role of the Office in maintaining the independence of the formal system.[33]

169. The Office provides substantive, technical and administrative support for the Tribunals through their Registries. It also assists staff members and their representatives in pursuing claims and appeals through the Office of Staff Legal Assistance. Moreover, it provides secretarial assistance, as appropriate, to the Internal Justice Council.[34] Lastly, its Executive Director, among other things, advises the Secretary-General on systemic issues relating to the system of internal justice, prepares the report of the Secretary-General on the administration of justice to the General Assembly, represents the Secretary-General within the Organization on such matters and reports to the Secretary-General regarding the work of the Office — without prejudice to its independence.[35]

170. In short, the Office includes and is responsible for:

(a) United Nations staff who are officers of the court (the Registries);

(b) United Nations staff who are counsel for staff members who are users of the system (Office of Staff Legal Assistance);

(c) The Secretary-General (who is the respondent under the current system), whom it assists, reports to and represents.

171. The current arrangement, owing to an unusual mix of functions assigned to the Office, may be seen, notwithstanding the somewhat declaratory safeguards included in its terms of reference, as affecting the principle of separation of powers and, consequently, judicial independence.

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[32] See ST/SGB/2010/3, sect. 2.1.

[33] Resolution 65/251, para. 32.

[34] See ST/SGB/2010/3, sect. 2.1, and resolution 62/228, para. 38.

[35] See ST/SGB/2010/3, sect. 3.

Office of Staff Legal Assistance

172. The General Assembly noted the important role played by the Office of Staff Legal Assistance in providing legal assistance to staff members in an independent and impartial manner.[36] The Assembly also recognized the importance of the Office as a filter in the system of administration of justice providing legal assistance to staff on the merits of their cases, especially when giving summary or preventive legal advice.[37] The Panel observes that the "filter" role is a function of the Office's legal officers acting as counsel — that is, having in mind the best interests of their clients. The status of counsel should be established officially for United Nations staff members for as long as they serve as the Office's legal officers (see para. 329). This may provide them with a "functional exemption" from those staff rules that may be incompatible with their independence from the Administration in the performance of their counsel duties.

Registries

173. To better safeguard these fundamental principles, there is a need to, among other things, establish a clearer institutional link between the Registries and the Tribunals (see para. 338). After all, the entire raison d'être of any registry is to serve the court; the staff of a registry, first and foremost, are officers of the court. Article 21 of the rules of procedure of both Tribunals is useful in this respect, but not sufficient: the status of officer of the court should be established officially for United Nations staff members for as long as they serve as Registrars or staff of the Registries. In addition, the judges should have a formal role in the process of selection and appointment of the Registrars and their staff, as well as in the evaluation of their performance.

Principal Registrar

174. The statutes of the Tribunals provide for the establishment of the Registries,[38] but the position of Principal Registrar is not foreseen therein. The position was established by the General Assembly for the purpose of overseeing the Registries.[39]

175. The functions of the Principal Registrar, who is part of the Office of the Executive Director of the Office of Administration of Justice, include both coordinating the work of the Registries and advising the Executive Director on the resources allocated to them and other technical matters. It is not clear whether the functions include the substantive support provided to the judges by the staff of the Registries in dealing with the cases before the Tribunals. In the view of the Panel, such clarification is needed.

Tribunals

176. The independence of the Tribunals is, of course, linked to the issue of the status of the judges. It has to be borne in mind, when addressing this question, that the judges in no way form part of the Secretariat hierarchy. This is so for the simple

[36] Resolution 65/251, para. 36.
[37] Resolution 68/254, para. 18.
[38] In article 6 (2) of the statute of the Dispute Tribunal and article 5 (2) of the statute of the Appeals Tribunal.
[39] Resolution 62/228, para. 47.

reason that they possess the power to rule with binding force against the Secretary-General, overturning administrative decisions that may be taken at a very senior level of management. In this respect, the situation is not different from the one that exists in national legal systems where the principle of separation of powers is well established.

177. The Dispute Tribunal judges are United Nations officials other than Secretariat officials, while the Appeals Tribunal judges are experts on mission.[40] They are, however, routinely categorized both by the Assembly and the Secretary-General as having a "rank",[41] presumably that of D-2 in respect of the Dispute Tribunal judges, who are being remunerated at that level, as suggested by the Secretary-General.[42] That their remuneration or conditions of service are set by reference to the D-2 level, however, does not transform them into D-2 staff. The reference to the Appeals Tribunal judges, who are currently experts on mission, as having a "rank" is even more questionable.

178. The confusion is a reflection of a persistent perception that the judges are part of the hierarchical system of the Secretariat and therefore are "junior" to every Secretariat official with a "higher rank". Even the Dispute Tribunal judges themselves, in 2014 and after stating that, by virtue of the doctrine of separation of powers and the independence of the judiciary, judges are not staff members, civil servants or officials of the organization, rather inconsistently insist that, in a hierarchical organization such as the United Nations, it is important that the judges are at the right level of seniority and status.[43] They then proceed to explain that their D-2 status is anomalous and that they should be upgraded.[44] In 2015, they reiterated those views, suggesting that the judges of the Tribunal should be placed at the Assistant Secretary-General level.[45] In the alternative, however, the judges suggested in 2015 that, in order to preserve and enforce the independence of the United Nations judiciary, consideration might be given to the removal of the judges from the international civil service. They suggested that judges should stand alone and be considered to be being entirely separate from the international civil service community and could simply hold a "judicial title and ranking", and hold a judicial position within the United Nations system.[46]

179. The Panel also notes the position expressed by the Appeals Tribunal judges that they should be designated as under-secretaries-general.[47]

180. The Panel is of the view that the legal status of the judges of the Tribunals has to be clarified both within the United Nations system — as being definitely outside the Secretariat — and for the purposes of harmonization of the privileges and immunities of the judges. In particular:

(a) The emoluments and conditions of service of the Dispute Tribunal judges should be established specifically for them and not by reference to the D-2 level;

[40] See resolution 63/253, para. 30.
[41] See, for example, resolution 68/254, para. 31, and A/69/227, annex V.
[42] See A/61/758, para. 33.
[43] See A/69/205, annex I, paras. 30 and 31.
[44] See ibid., para. 33.
[45] See A/70/188, annex III, para. 41.
[46] See ibid., para. 43.
[47] See ibid., annex II, paras. 24-27.

(b) It should be clearly specified that the only "rank" that the judges of the Tribunals possess is that of a judge of the internal judicial system of the United Nations;

(c) The judges of the Appeals Tribunal should be recognized as officials other than Secretariat officials; accordingly, the privileges and immunities currently enjoyed by the Dispute Tribunal judges under article V, section 18, of the Convention on the Privileges and Immunities of the United Nations would be extended to the Appeals Tribunal judges, as suggested by the Secretary-General.

181. In supporting the most recent proposal by the Secretary-General, the Panel notes that neither the part-time engagement of the Appeals Tribunal judges nor the system of emoluments that they receive could possibly justify the marked difference in their privileges and immunities in comparison with the Dispute Tribunal judges or should be seen as an impediment to transforming their current position of experts on mission into that of officials other than Secretariat officials.

182. The above proposals as such entail no change in the level of emoluments of the judges of either Tribunal.

183. In 2011, the General Assembly entrusted the Internal Justice Council with including the views of the two Tribunals in its annual reports.[48] The views have since been annexed to those reports. The arrangement allows the Tribunals to make their views known to Member States on matters that they consider topical. This is an improvement over the situation where the work of the Tribunals was submitted to Member States by the Secretary-General in his annual reports on the administration of justice to the Assembly and by the Council in its annual reports. It would appear more logical and more in line with the weight of the two judicial bodies in the system of internal justice, however, if the Tribunals were to submit their annual reports directly to the Assembly. The reports, compiled with the support of the Registries, could include objective data on the work of the Tribunals during the reporting period, together with budgetary and possibly human resources requests. The President of each Tribunal should be invited to present the respective report to the Assembly. This would, among other things, allow for direct interaction between the Tribunals, on the one hand, and Member States, on the other, without undermining the independence of the Tribunals. A similar practice exists in respect of the International Court of Justice, which has never given rise to any concerns as to the independence of the principal judicial organ of the United Nations. On the contrary, the suggested arrangement would enhance the independence of the Tribunals in relation to other bodies, which are part of the formal system. The Secretary-General and the Council (and the Advisory Committee on Administrative and Budgetary Questions when appropriate) would of course be providing their comments on the work or the requests of the Tribunals in their own reports. Thus, the Assembly would have a more accurate and detailed picture of the functioning of the Tribunals within the context of the internal justice system.

184. The Dispute Tribunal judges are also requesting the General Assembly to consider the establishment of a mechanism to enable them to voice their concerns regarding decisions affecting their conditions of service and contractual rights. They view the lack of such a mechanism as inimical to the independence of the

[48] Resolution 66/237.

judiciary.[49] The Panel is of the opinion that the establishment of the direct reporting line referred to in the preceding paragraph could take care of some concerns underlying the request.

185. The principle of separation of powers should be governing the relationship not only between the Tribunals and the executive branch of the United Nations — its Secretariat — but also the relationship between judicial bodies and the legislator — the role that is performed by the General Assembly in respect of the Tribunals. It was the Assembly that established the Tribunals and adopted their statutes. Moreover, even the Tribunals' rules of procedure are subject to approval by the Assembly. The Assembly has the authority to amend the statutes or, for that matter, change the internal justice system altogether. The Assembly should, however, definitely refrain from becoming involved in the judicial work of the Tribunals. This work includes, in particular, determining, in each case before the Tribunals and more broadly, the applicable law and, if necessary, the hierarchy of the rules in question. This is part and parcel of the power of interpreting and applying the law, which is inherent in the judicial function. Moreover, the question arises whether the Tribunals would be bound to act according to the views of the Assembly relating to their judicial function, which are expressed in its resolutions in a form other than that of an amendment to the statutes.[50]

Internal Justice Council

186. Neither the general mandate of the Internal Justice Council, nor the way in which it is being implemented, can give rise to concerns as to respect for the principles of judicial independence and separation of powers. This holds true in relation to the Council's role in the selection of the candidates to fill vacancies in the Tribunals, which consists of providing expert and unbiased advice to the General Assembly, as well as to its second task, providing the Assembly with its views on the implementation of the internal system of administration of justice. The latter function is more relevant to the topic of independence, given that it entails interaction with all stakeholders, including the judges, and making, when necessary, comments and recommendations relating to the judicial part of the formal system. However, the Council's role here is carefully circumscribed; it can be described as "monitoring without interfering" generally and specifically in respect of the judicial function, which is the exclusive domain of the Tribunals. As to the appropriate independence of the Council — as an expert body — the Panel supports the position of the Council expressed in its most recent report to the Assembly concerning the "representatives" of management and staff on the Council.[51]

Informal system: Office of the United Nations Ombudsman and Mediation Services

187. First, the current design of the informal system is not capable of affecting the application of the principles of judicial independence and of separation of powers in relation to the formal system. Second, the principles are not directly applicable to the informal part of the internal system of administration of justice. The independence of the United Nations Ombudsman (and similar officers for other

[49] See A/70/188, annex III, para. 25.
[50] See, for example, paragraph 26 of resolution 68/254 and paragraph 37 of resolution 69/203.
[51] See A/70/188, para. 112.

United Nations entities) has to be understood within the context of its mandate, which embeds the Office of the United Nations Ombudsman and Mediation Services in the Secretariat (or other ombudsman's offices in the respective executive structures). Systemically, this places the United Nations Ombudsman as an "inside outsider" tasked with voluntary informal conflict resolution. In particular, this specificity of the position is reflected in his or her direct access to the Secretary-General (or the executive heads of other United Nations entities) and to the respective senior management levels. This, however, is not a "reporting line", but rather the tool and condition necessary for the fulfilment of his or her task. The Mediation Division is part of the Office. The roles of a mediator and that of an ombudsman in many respects are similar. So too are the institutional arrangements, which provide for the appropriate degree of independence for this service.

B. Transparency

188. According to the Redesign Panel, one of the shortcomings of the old system of administration of justice that it sought to correct was that it generally lacked transparency and failed to satisfy minimum requirements of the rule of.[52]

189. The General Assembly directed that the new justice system must be transparent. The Panel notes that transparency attaches to both independence of justice and fairness of proceedings and follows the old adage that justice must not only be done but seen to be done. It is also important to bear in mind, however, that the meaning of transparency has to be correctly understood for each of the components of the internal justice system. The standards expected with regard to the functioning of the Tribunals do not necessarily apply to the Administration, because of their different nature. In the case of the Tribunals, publicity of their acts is of the essence in a modern justice system. In the case of the Administration, while transparency requirements have been steadily evolving in the past years, it is not assumed that every act has to be public, in the same sense as for the Tribunals. A differentiated analysis is therefore necessary.

Tribunals

190. An important element of the rule of law is a qualified and independent judiciary operating within a transparent and effective internal justice system, making decisions on merits without fear or favour from the Administration. Transparency is key to enabling individuals subject to its jurisdiction to gain confidence that it is operating as such.

191. In the light of the practices that it observed to be in place, the Panel concludes that the operation of the judiciary is generally transparent. The qualifications required of judges and the appointment process are made public.

192. The sessions of the Tribunals are open to the public, the hearings are public, evidence is led and is subject to cross-examination and decisions are delivered orally in public or handed down in written form and then publicized.

193. The courtrooms are accessible to the public. On 24 November 2014, a new courtroom was inaugurated in New York. All Dispute Tribunal locations in Nairobi,

[52] See A/61/205, para. 73.

Geneva and New York now have professional and functional courtrooms. The case rolls are published in advance in the buildings and on the relevant websites.

194. There is also regular public reporting of the work of the new system to the General Assembly through various channels, including the report of the Internal Justice Council to which the observations of the judges are annexed. The reports, save for the confidential reports of the United Nations Ombudsman, are publicized and open for discussion by the Assembly.

195. The Panel is also of the opinion, however, that there is room for improvement in the functioning of the Tribunals. As expressed below (see para. 264), the practice of each branch of the Dispute Tribunal differs and not all judges apply the same criteria regarding the necessity of holding oral hearings when factual issues are being debated. Although article 18 of the rules of procedure of the Appeals Tribunal allows it to hold oral hearings, only some 20 such hearings have been held to date.

196. With regard to access to the jurisprudence of the Tribunals, it is generally acknowledged that the search engine is outdated and dysfunctional. This is particularly problematic in the United Nations internal justice system because of the complexity of the applicable rules within the Organization (see paras. 200-206). Publicity of court decisions therefore plays an essential role in making the rules clear in their interpretation and application to a certain set of facts. They have to be easily accessible for that purpose.[53]

197. The Panel verified, by reference to Appeals Tribunal judgments, that there was ground for the complaints about decisions of the Tribunal being delivered without or with insufficient reasons. In the Panel's view, this is not an acceptable practice and is not transparent decision-making.

Knowledge of the internal justice system

198. The Panel found that stakeholders, while generally aware of the existence of the internal justice system, had little or no actual knowledge of the system and the resources that it offered. The Panel heard staff, especially in the field, express frustration because they did not know where to begin or to whom to turn in order to gain access to the system. The electronic filing system is not easy for staff members to understand, especially where it is most needed, i.e. in field operations, where often local staff members are not proficient in any of the official languages of the United Nations. The Panel recommends that efforts to enhance knowledge of the system on the part of all staff members be increased in order to ensure its universal accessibility.

199. As stated above, the current search engine for access to the website is outdated and intermittently dysfunctional, thus hindering transparency and knowledge of the system. Those concerns were noted in the reports of the Secretary-General and the Internal Justice Council. The Panel has taken note that the search engine and the online access system are currently being updated and trust that this will remedy the situation.

[53] In this respect, the Panel is of the opinion that the Office of Administration of Justice should be authorized to publish consolidated versions of the Tribunals' statutes on its website after amendments have been adopted by the General Assembly, even in cases in which the Assembly has adopted only the amendments and not the consolidated text.

Rules and their application

200. There are myriad rules, regulations and administrative issuances that have not been consolidated or updated and are within the knowledge of management but not of staff members. It is generally acknowledged that the rules and regulations are both difficult to understand and to gain access to. An example may explain how this has an impact on the system in its transparency and overall functioning.

201. The administrative instruction on special measures for the achievement of gender equality (ST/AI/1999/9) provides for gender preference as follows: "Vacancies in the Professional category and above shall be filled, when there are one or more women candidates, by one of those candidates, provided that: (i) Her qualifications meet the requirements for the vacant post; (ii) Her qualifications are substantially equal or superior to those of competing male candidates." On the other hand, the administrative instruction on the staff selection system (ST/AI/2010/3 and Amend.1-2) states that the head of department is to select the candidate he or she considers to be best suited for the functions. Moreover, section 13.3 of the same instruction stipulates that its provisions shall prevail over any inconsistent provisions contained in other administrative instructions in force at the time of issuance.

202. In *Tiwathia*,[54] a senior manager submitted for the respondent that administrative instruction ST/AI/2010/3 superseded administrative instruction ST/AI/1999/9 and stated in evidence that, while technically "on the books", administrative instruction ST/AI/1999/9 was "outdated" and its "principles ha[d] been incorporated into other management tools". This, in fact, adds weight to what staff members told the Panel: "management keeps things to themselves".

203. The Dispute Tribunal agreed with the respondent's position, finding that administrative instruction ST/AI/1999/9 was inconsistent with administrative instruction ST/AI/2010/3. Nevertheless, the continuing validity of administrative instruction ST/AI/1999/9 was not questioned by the Secretary-General or the judges.

204. In *Zhao, Zhuang and Xie*,[55] the Dispute Tribunal ruled in favour of the applicants on the ground that the hiring manager had failed to apply the gender preference criteria in section 1.8 (d) of administrative instruction ST/AI/1999/9. On appeal, it was argued on behalf of the Secretary-General that the analysis performed had fulfilled the requirements of the section, but the Appeals Tribunal disagreed and affirmed the Dispute Tribunal's decision, ruling that section 1.8 (d) was applicable at the stage of the appointment and promotion bodies.

205. There is need for greater transparency and consolidation of the rules and administrative issuances, which is also requested by the Internal Justice Council:

> Quite apart from improved search engines, the law applicable to the resolution of United Nations disputes is itself unnecessarily obscure. The Internal Justice Council was informed that judges and litigants are sometimes left to piece together the present state of United Nations law from different iterations of administrative issuances promulgated over the years. Consideration should be

[54] UNDT/2015/021

[55] 2015-UNAT-536.

given to producing consolidated versions of administrative instructions whenever they are amended.[56]

206. In relation to the application of the rules, the Panel acknowledges the recent efforts made by the Administration to make decisions and their rationale more transparent (i.e. downsizing in peacekeeping missions). Nonetheless, staff, especially those in the field, complained to the Panel that, far from assisting them by making the system transparent, management hindered or obstructed access to information, in an apparent belief that that would discourage litigation by staff members. The Panel believes that there is still room for improvement in making the decision-making process by managers more transparent. That, at the same time, should help in preventing litigation in some cases.

C. Professionalization

207. The Redesign Panel noted that a professional, independent and adequately resourced internal justice system was critical because it was only such a system that could generate and sustain certainty and predictability, and thus enjoy the confidence of managers, staff members and other stakeholders. It said that a justice system was only as good as the level of respect and confidence it commanded.[57]

208. The General Assembly has put in place a "professionalized" system of administration of justice. It recognized that the work of judges and counsel in a justice system required specialized knowledge and expertise in dispensing impartial justice, in the case of judges, and for counsel, skills in representing the best interests of their clients in a courtroom, observing standards of conduct which were appropriate in the interests of the fair and just administration of justice.

209. At first sight, the bench is more professionalized than in the past. Improvements can, however, still be made and are, in fact, necessary. Judicial independence is not absolute but comes with duties for the judges of professionalism, for example to complete cases in a timely manner, to be scrupulously fair and impartial and thus dispel perceptions of bias emanating from their decisions and/or unsubstantiated statements from the bench, that they favoured staff or management, and to which must be added the responsibility for respect and judicial restraint against excesses of authority and unnecessary, harmful comments.

210. The current criteria for the appointment of judges require several years of judicial service in the national jurisdiction. The Panel recommends that provision be made for knowledge of human rights law and international law. Proven practical experience in administrative law and criminal justice is of course desirable. Relevant institutional knowledge would also be useful. Due diligence should be exercised in the recruitment process.

211. The Panel recommends better preparation for judges before they assume their duties. A thorough induction process will help to familiarize judges with the framework of laws and rules, established jurisprudence, the ethos and inner functioning of the Organization and the goals of both justice and a harmonious work environment.

[56] See A/70/188, para. 36.
[57] A/61/205, para. 8.

212. The bar is lagging behind in its professionalization. The Panel heard from stakeholders that legal representatives approached cases as a fight to the death and did not seek to encourage and facilitate dialogue between the parties with a view to settling disputes.

213. They do not assist self-represented litigants. Professionalism entails both acting in the best interests of clients and maintaining the highest standards of integrity and decorum. It includes responsibilities, such as bringing to the attention of a tribunal all relevant legal instruments and decisions so that it will make a decision in complete knowledge of the applicable law and principle.

214. It is advisable for legal representatives to acquire courtroom expertise and knowledge of the functioning of the Organization as a way of addressing uneven quality of representation and striving for equality of arms.

215. A code of professional conduct is necessary. The Panel is of the view that there should be a single code of conduct for all counsel, designed specifically for those who appear before the Tribunals, rather than a specific code for external counsel that would leave staff members to be regulated by the Staff Regulations and Rules of the United Nations.[58]

216. It is noted that other parts of the system, including legal representatives for the Secretariat, the Office of Staff Legal Assistance and the Management Evaluation Unit, are professionalized. Continuing education in legal practice and the evolving jurisprudence will help to sustain the system.

D. Decentralization

217. The General Assembly decided to establish a decentralized system of administration of justice.[59] In the view of the Panel, that feature is twofold. The international nature of the Organization requires that the internal justice system be structured taking into consideration its diversity and worldwide presence. In addition, and more importantly, the decentralized character of the system is interwoven with the assurance of access to justice (see sect. IV.E) and is to be conceived of accordingly. Only a decentralized system guarantees access to justice to all staff members, either at Headquarters or in the field. Justice has to reach people, not the other way around.

218. Where the informal system is concerned, the Office of the United Nations Ombudsman and Mediation Services is headquartered in New York. It has seven regional offices and a mediation service. The regional offices are located in Bangkok, Entebbe, Geneva, Goma, Nairobi, Santiago and Vienna. Each office is served by a dedicated regional ombudsman. The ombudsmen for the funds and programmes and for UNHCR provide services to their global constituencies from New York and Geneva, respectively. The informal system is more decentralized than the formal system, as is shown below.

219. To assess the extent of the decentralization of the formal system of administration of justice is, the Tribunals and other entities comprising the system deserve a differentiated reference.

[58] See A/69/205, para. 184.

[59] See A/61/261, para. 4.

220. The Redesign Panel proposed the creation of the Dispute Tribunal as a first-instance decentralized tribunal,[60] thus asserting its decentralization as a key feature. The Secretary-General agreed.[61] This was the response to the old system's advisory boards (joint appeals boards and joint disciplinary committees), which were mainly headquarters-based, with locations in New York, Geneva, Vienna and Nairobi, but no standing in the field. This raised a concern for the Redesign Panel, in particular regarding disciplinary cases, because, it said, physical distance between field duty stations and Headquarters resulted in substandard justice. It stated that staff members in field offices and peacekeeping missions who were the subject of disciplinary proceedings before joint disciplinary committees at Headquarters were frequently interviewed by telephone, having little or no opportunity to present their case and answer questions in person. The Redesign Panel said that that practice was only a few degrees removed from trials in absentia.[62] This led it to propose a new dispute tribunal, sitting in New York, Geneva and Nairobi, each having a full-time judge, and in Santiago and Bangkok, each having a half-time judge.[63]

221. The General Assembly decided to create the proposed dispute tribunal, but sitting in three locations (New York, Geneva and Nairobi) instead of the five suggested. The Tribunal receives cases from various duty stations.[64] Under article 5 of its statute, the Dispute Tribunal may decide to hold sessions at other duty stations, as required by its caseload. The Panel understands that this combination of the Tribunal being permanently based in three duty stations and its capacity to act as a mobile court is the statutory response to the need to have a decentralized first-instance court.

222. The Panel therefore suggests that, in the current conditions, fulfilling the Redesign Panel's proposal of establishing a permanent or half-time seat of the Dispute Tribunal in Santiago and/or Bangkok is not justified. Although a seat in Bangkok would mark the presence of the justice system in Asia, there are more suitable and cost-effective ways of covering demand in the region. As to Santiago, according to the interviews held by the Panel at the Economic Commission for Latin America and the Caribbean and the information collected, there are only a few cases in the region each year. In addition, the region does not have to deal with time-zone drawbacks that could hinder communications, for example between Santiago (GMT-3) and New York (GMT-4). It is important to note, however, that, in determining the branch of the Dispute Tribunal that will handle a case, priority is sometimes accorded to the Tribunal's workload and not to the geographical source of the case.

223. The Panel suggests that, by increasing the mobility of the Dispute Tribunal in accordance with article 5 of its statute, the Tribunal would be able to reach duty stations in the field, thus securing access to justice for staff members and carrying out hearings in the appropriate conditions (see para. 372).

[60] See A/61/205, paras. 74 and 152.
[61] See A/61/758, para. 17.
[62] See A/61/205, para. 24.
[63] See ibid., para. 76.
[64] In 2014, 22 per cent of cases received came from field operations (peacekeeping and political missions), 34 per cent from the Secretariat and 44 per cent from agencies, funds and programmes (see A/70/187, fig. I).

224. The Dispute Tribunal is decentralized, but it can hardly be said that the system of administration of justice is decentralized as a whole. The other entities interacting within the formal system, and especially management, are highly Headquarters-based. The Redesign Panel already diagnosed the latter when it advised that, with the decentralization of the justice system and the consequential delegation of authority to the executive heads of offices away from headquarters and missions, it might be necessary to provide additional legal advisers for the Administration in duty stations away from New York.[65]

225. In the same vein, the Panel observes that, when dealing with disciplinary matters, legal representation on behalf of the Administration is conducted exclusively out of New York. A recent decision by the Dispute Tribunal reflects the consequences that this lack of a decentralized approach by the Administration may have for the Organization as a whole:

> As a separate final observation, this case has highlighted another systemic, albeit procedural, issue, that is, the practical difficulties of processing cases where the parties sit in duty stations with 11 hours of time difference. While the Tribunal greatly appreciated the willingness of Counsel for the Respondent to appear in New York at 6:30 a.m. for the case management discussion, with the Applicant appearing in person after the end of his working day in Bangkok at 5:30 p.m., it is strongly suggested that a solution is needed that takes better into account the global geographical reach of the United Nations and the General Assembly's stated desire for a decentralized justice system. It was unfair to both the Applicant and Counsel for the Respondent to appear before the Tribunal at these times, but nothing more reasonable to both parties was possible. Unless this matter is properly considered, the Tribunal may be left with Counsel for the Respondent in New York being only available, for technical reasons, for a full hearing from 9 a.m. (New York time) and an Applicant in Bangkok being required to commence a hearing at 8 p.m. (Bangkok time), if indeed it is possible to technically arrange at this time. It is unreasonable for any person to have to commence a hearing at such a time at night. It would also be practically impossible if they were to desire to call witnesses. In addition it is unimaginable that a lawyer would be prepared to act for an applicant if a hearing were to start at 8 p.m. and proceed for at least four hours.[66]

226. The Panel strongly encourages the Administration to take note of the situation and adopt proper measures to facilitate the functioning of the Dispute Tribunal in similar cases.

227. Regarding the Management Evaluation Unit, which operates from Headquarters, the Panel recommends that Unit officers be placed in regional offices and in the field. This does not necessarily require new appointments or hiring more personnel. Some of the Unit's functions could be delegated to the local management officers at the duty stations, thus serving as a fluid communication channel between the staff involved in a case and the Unit in New York. This is not only a geographical decentralization issue; such a measure would also address the challenges posed by the cultural and linguistic diversity of the Organization. It

[65] See A/61/205, para. 114.
[66] UNDT/2015/069, para. 33.

would also contribute to improving and facilitating negotiations between the Unit and staff members, especially those without the assistance of counsel.

228. On the other hand, although the Office of Staff Legal Assistance is a more decentralized entity in comparison with the other offices within the system, its legal officers, owing to underresourcing, cannot always have sufficient direct communication with their clients, which prevents them from performing their duties properly (see para. 333). The Office performs various outreach operations and training activities,[67] but these should, in the Panel's view, not be seen as efforts to satisfy the requirements of decentralization, but rather as contributing to greater awareness of and access to the system. Although a decentralized system seeks to ensure access to justice for all staff members, it also has to grant effective protection of their rights throughout the process. This means here that, to accomplish its mandate, the regular operation of the Office requires sufficient resources to provide appropriate legal assistance and representation.

E. Access to justice

229. In the section of its report pertaining to scope and jurisdiction,[68] the Redesign Panel noted that the Organization's internal justice system — formal and informal — was applicable only to those considered staff members, which was interpreted restrictively by United Nations practice and the established jurisprudence. Persons employed on special service contracts and individual contractors were not included. United Nations agreements with troop-contributing countries provide for a dispute resolution framework for locally recruited staff. The reality on the ground, however, is that no such system has been established and many locally recruited personnel in peacekeeping missions are employed for long periods as individual contractors. The arbitration clause in most of their contracts is not realistic in the field and will be costly for all parties when it is invoked. The clause is more a deterrent than an adequate and accessible dispute resolution mechanism. It should, moreover, not be forgotten that disputes in the workplace, including harassment and discrimination cases, do not arise only between staff, but also between staff and non-staff. Only a single holistic dispute resolution mechanism should be retained.

230. The Redesign Panel observed in this respect:

> All individuals appointed to work for the Organization by way of personal services should have full access to the informal and formal justice system of the United Nations. The Redesign Panel considers that, in addition to those currently covered by article 2 of the statute of [the United Nations Administrative Tribunal], the system of justice should be extended to:
>
> (a) Any person appointed by the Secretary-General, the General Assembly or any principal organ to a remunerated post in the Organization;
>
> (b) Any other person performing personal services under contract with the United Nations. This category includes consultants and locally recruited personnel of peacekeeping missions.

[67] See A/70/187, paras. 75 and 76.
[68] A/61/205, paras. 15-20.

231. The Secretary-General agreed with the proposals, but the General Assembly initially decided that only those who had access to the old system would have access to the new system.[69] It subsequently added that interns, type II gratis personnel and volunteers (other than United Nations Volunteers) would have the possibility of requesting an appropriate management evaluation but would not have access to the Tribunals. It decided to revert to the issue of the scope of the system of administration of justice at its sixty-fifth session, with a view to ensuring that effective remedies were available to all categories of United Nations personnel, with due consideration given to the types of recourse that were the most appropriate to that end.[70]

232. Although the issue has come before the General Assembly every year, the reality on the ground is that no adequate alternate system of justice exists for non-staff members and staff in the field. The Secretary-General, in 2011 and in response to a request from the Assembly, proposed an expedited arbitration procedure,[71] but this appears to have been shelved.

233. In his comments on the Redesign Panel's report, the Secretary-General stated that United Nations staff members had no legal recourse to national courts in respect of employment-related grievances and the Organization therefore needed to offer its personnel effective recourse and must bear many of the attendant costs, recalling that, as an organization involved in setting norms and standards and advocating the rule of law, it had a special duty to offer its staff timely, effective and fair justice that fully complied with applicable international human rights standards.[72] The Panel reiterates the proposal of the Redesign Panel to extend the access of the justice system to the entire workforce of the United Nations. It urges the Organization to ensure that access to a fair, impartial and transparent process is established for all categories of personnel. The General Assembly promised to revert to the scope of the system of justice to ensure effective remedies. The Panel is of the opinion that the matter requires urgent attention.

234. Regarding access to the system by staff, the Panel visited field offices in Beni and Goma, Democratic Republic of the Congo, and Entebbe, Uganda, in addition to holding videoconferences with staff associations and managers in Bangkok and Addis Ababa from Nairobi. It found deeply disturbing conditions of lack of justice for staff and other personnel, especially in remote areas such as Beni. For example, information on how to reach the justice system was largely inaccessible to them, and certainly not in the local languages. Dysfunctional communication systems hampered the online filing of claims, contact with Headquarters and the Office of Staff Legal Assistance and following court proceedings.

235. Justice is uneven where support is fragmented, underresourced or non-existent. The Panel observed that, where all the parts of the formal and informal systems were in place and visible, and fully resourced, including the Tribunals, the Management Evaluation Unit, the Office of Staff Legal Assistance, the Office of the United Nations Ombudsman and Mediation Services, legal and medical services, the Registries, the Office of Human Resources Management, staff counsellors and investigation units, as in New York, Geneva and Nairobi, justice was better served.

[69] See resolution 62/228, para. 7.
[70] See resolution 63/253, para. 7.
[71] See A/66/275, annex II.
[72] See A/61/758, paras. 5 (a) and (b).

236. Field offices and missions, where, it is recalled, most of the United Nations workforce is serving, are particularly poorly served. In such situations, there should, at a minimum, be ready access to focal points, staff training, jurisprudential guides and resources.

F. Rule of law and due process

Rule of law

237. The Redesign Panel criticized the previous internal justice system for failing to satisfy the minimum requirements of the rule of law and affording little, if any, protection of individual rights, including the right to be treated fairly.[73] As already indicated, the fundamental elements of the new system were then encapsulated in paragraph 4 of resolution 61/261, in which the General Assembly stated the core objectives of the internal justice system, which were to be consistent with the relevant rules of international law and the principles of the rule of law and due process. They were reiterated in resolutions 62/228 and 63/253.

238. The General Assembly has, therefore, recognized the rule of law as an essential administrative law value, in addition to the significance of rule of law principles for dispensing justice, promoting respect for rights and ensuring accountability within the Organization. Simply put, observance of the rule of law is necessary if the law is to respect human dignity. The Assembly's emphasis on the compatibility of the system with international law is also consistent with the reality that those principles of customary and conventional human rights law, which provide adequate safeguards for the dispensation of justice, can also be described as principles of good administration.

239. It is true that the exercise of power and authority ought to have a basis in law and an essential demand of the rule of law is the adherence to "prescribed law".[74] That law, however, must have as its basis norms and standards that are the guiding principles for the objectives that it aspires to achieve. In this context, the Panel finds that the affirmations reiterated by the General Assembly in paragraph 26 of its resolution 68/254,[75] where it apparently sought to curtail the Tribunals' powers, are contradictory to the aspirations that it had expressed while shaping the basic structure of the new internal system of justice. Tribunals must apply the principles and standards of human rights in the adjudication of all matters before them. This is a part of their judicial functions. The rule of law, principles of natural justice and human rights are intrinsic to both judicial and legislative responsibilities and, in the hierarchy of norms, hold a status superior to statutory provisions.

240. For these same reasons, the Panel is encouraged by the strong and forthright defence of human rights and of the cardinal principle of gender equality by the

[73] See A/61/205, paras. 72 and 73.

[74] Prescribed law has, of course, to be clear. United Nations rules and regulations are far from achieving this standard. The Panel encourages that this matter be given proper attention as soon as practicable.

[75] The General Assembly reaffirmed that recourse to general principles of law and the Charter by the Tribunals was to take place within the context of and consistent with their statutes and the relevant Assembly resolutions, regulations, rules and administrative issuances. It reconfirmed this in paragraph 37 of its resolution 69/203.

Appeals Tribunal in its judgment in *Chen*.[76] The Tribunal rejected the Administration's view that only internal rules and procedures of the United Nations and not the Universal Declaration of Human Rights or the International Covenant on Economic, Social and Cultural Rights would apply in determining the entitlement of a staff member.

241. The Appeals Tribunal held: "As stated in article 23 (2) of the Universal Declaration of Human Rights, '[e]veryone, without any discrimination, has the right to equal pay for equal work.' Of course this principle applies to the United Nations staff. 'Budgetary considerations' may not trump the requirement of equal treatment. The Secretary-General's arguments to the contrary are bizarre and feckless." The Panel understands the Tribunal's surprise at the Administration's stance, when the Charter and the Staff Rules already uphold the values that the Dispute Tribunal has protected in its judgment.

242. The General Assembly is as bound by these principles when formulating the legal framework for the system of justice as the Tribunals are when dispensing justice. Any attempt to make the Tribunals mere creatures of their statutes and deny the reality of their inherent powers would diminish both the legitimacy and the credibility of the system as a whole. Modern administrative law embraces principles of international law and should ensure that the fundamental rights and freedoms enshrined therein are reflected in the legal framework of the system of administrative justice. Human rights and rule of law principles have proved effective in keeping administrative authorities within their limits and are increasingly being used to serve as a touchstone to test all administrative actions.[77] Respect for these principles becomes more important in the context of justice within the United Nations because of the standards that it has set and the values that it is committed to promoting and protecting. The Panel in particular recalls the determination expressed in the Charter to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.

Need for equal protection for all

243. The current system of administration of justice is generally an improvement on its predecessor. There is now access to a two-tier judicial system with recourse to an impartial adjudication of disputes and the right to an appellate court. The Panel has already pointed out, however, that access is limited and does not satisfy the cardinal principle of "equal protection of the law". The Tribunals have, in a limited way, expanded the standing of a "staff member" in some cases in order to extend the protection of the justice system to those whose standing was denied by the Administration. The gap in legislation cannot, however, be addressed through judicial interpretation alone and, as discussed above, would require due consideration by the General Assembly in order to provide effective recourse to all who are in an employment or contractual relationship with the Organization.

[76] 2011-UNAT-107.

[77] The Indian Supreme Court, for example, has propounded the idea in many cases and has more recently held that the rule of law in administration is closely related to human rights protection (see *Zahira Habibullah H Sheikh and Anr. v. State of Gujarat and Ors.*, case No. 446-449 of 2004, judgment of 12 April 2004).

244. The gap has become particularly troublesome in the context of protection against retaliation. It is mandatory for all United Nations staff members to report any misconduct and other breaches of the Organization's rules and regulations. In section 1.3 of his bulletin ST/SGB/2005/21, the Secretary-General condemns retaliation as a violation of the fundamental obligation of all staff members to uphold the highest standards of efficiency, competence and integrity and to discharge their functions and regulate their conduct with the best interests of the Organization in view. Yet the protection in the law has serious inadequacies.

245. When the Ethics Office and OIOS, which are competent bodies to proceed with investigations on complaint, do not fulfil their responsibilities justly or fairly, the staff member who has been the target of retaliation is left with no recourse. The Dispute Tribunal has held that decisions of the Office that prima facie retaliation has not occurred have direct legal consequences for the rights of the complainant. As such, these are appealable administrative decisions. The Appeals Tribunal recently overturned the judgment of the Dispute Tribunal in *Wasserstrom*,[78] finding that the Office was limited to making recommendations to the Administration and those recommendations were not administrative decisions subject to judicial review. The Panel recalls the judgment of the Appeals Tribunal in *Abu Hamda*,[79] where the Tribunal itself showed concern for the plight of those who failed to report misconduct for fear of reprisals. It recommended that "adequate measures (in addition to those for the protection of junior staff who report[ed] misconduct and misdemeanors of their superiors) be put in place to prevent such reoccurrences". If the Tribunals lack the power to redress this problem, then legislative action on the part of the General Assembly becomes imperative to ensure justice for all.

246. The system offers no protection at all against retaliation for reasons other than reporting misconduct. There is no legal provision or prescribed procedure, for example, to protect a staff member from retaliation for appearing as a witness in a case before the Dispute Tribunal to support a case against the Administration, or lodging an appeal as such. The Panel finds that the inadequacies place severe limitations on the protection system with regard to safeguards against retaliation and the protection of individual rights. The fear of retaliation among staff is real and can be counted as a factor that has serious implications for access to justice.

Binding nature of court decisions for the parties

247. The General Assembly agreed with the recommendation of the Redesign Panel that the Tribunals, once established, should have the authority to issue binding decisions and order appropriate remedies. The decisions of the Dispute Tribunal are binding on the parties,[80] even though the lack of more energetic propagation of decisions and a level of resistance from the Administration does mitigate the impact of the jurisprudence on management practices.

248. Notwithstanding this statutory provision on the binding nature of the Dispute Tribunal's decisions, the Administration has shown a tendency to avoid execution in some cases, on the ground that the decisions were unlawful. In a landmark judgment, the Appeals Tribunal established clear jurisprudence regarding the binding nature of the Dispute Tribunal's decisions, holding as follows:

[78] 2014-UNAT-457.
[79] 2010-UNAT-022.
[80] See article 11.3 of its statute.

> It is unacceptable that a party before the Dispute Tribunal would refuse to obey its binding decision in this manner, regardless of the fact that, in the instant case, the order was ultimately vacated by the Appeals Tribunal. To rule otherwise would undermine legal certainty and the internal justice system at its core, and would incite dissatisfied parties to consider [Dispute Tribunal] orders as mere guidance or suggestions, with which compliance is voluntary.[81]

Predictability and certainty through jurisprudence

249. In the same judgment, the Appeals Tribunal also established that the principle of stare decisis applied to its judgments. In paragraph 24 of the judgment, it held as follows: "There can be no doubt that the legislative intent in establishing a two-tier system was that the jurisprudence of the Appeals Tribunal would set precedent, to be followed in like cases by the Dispute Tribunal. The principle of stare decisis applies, creating foreseeable and predictable results within the system of internal justice." The Panel is aware of the difference between the common and civil law orientations on the question of judicial precedent. Nonetheless, the Panel gives due regard to the advantage of predictability and certainty that comes with such an approach, and feels that the Tribunals' concurrence on that approach would enhance their authority, bring more coherence in jurisprudence (especially in setting standards for judicial review) and lend greater credibility to the system.

Inherent powers of a court to enforce respect

250. Another important aspect of judicial authority established in *Igbinedion* was the inherent power of a court to enforce respect for the court and its procedures and compliance with its decisions. This power of the court is neither dependent on nor emanating from statutory provisions. The court is presumed to have the power to hold anyone in contempt for improper conduct before it or for failure to comply with its orders and directions. The Panel believes that this judgment is one of the most significant judgments of the Appeals Tribunal that has applied principles of the rule of law in expounding the scope of the judicial powers and defining the relationship of the Tribunals inter se.

Due process

251. The General Assembly decided to establish a new system of administration of justice consistent with the principle of due process to ensure respect for the rights and obligations of staff members. According to the Redesign Panel, the former system failed to meet many basic standards of due process established in international human rights instruments.[82]

252. Being originally conceived as a defendant's right within the criminal procedure, what the due process principle demands within the internal system of administration of justice at the United Nations needs therefore to be determined. For this purpose, it is worth noting that, given that the Tribunals have jurisdiction over matters of quite a different nature, due process requirements resemble those of criminal procedure due process, solely in disciplinary matters, to the extent that both pursue the imposition of a type of punishment. In the case of labour and other administrative matters, due process requirements are somewhat different.

[81] *Igbinedion* (2014-UNAT-410), para. 29.

[82] See A/61/205, para. 5.

253. With respect to disciplinary matters, the Dispute Tribunal has found that due process demands that staff members be provided with an opportunity to defend themselves.[83] This means respecting the presumption of innocence, being informed about the charges and the identity of the accusers, a right to respond to the charges within the reasonable time required to prepare an effective defence, the right to produce evidence, the possibility of cross-examining witnesses and the right to legal counsel. The Panel is satisfied that the Tribunal's scrutiny of disciplinary proceedings, including the observance of the rules governing the procedure and the conditions needed for the effective exercise of the above-mentioned rights, is appropriate.

254. Another singularity of disciplinary cases is the standard of proof. The Tribunals have ruled that "beyond a reasonable doubt" is too demanding a standard, whereas "preponderance of evidence" is too loose. The Panel agrees with the Tribunals' requirement of clear and convincing proof in such cases.

255. In disciplinary matters, a related issue is the way in which investigations are carried out. The various stakeholders interviewed by the Panel agree that fact-finding is unprofessional and often ineffective. Although the number of investigations regularly conducted is not significant, they do present a challenge to the system that demands imperatively to be faced: in the current state of affairs, they are "impunity investigations". Unprofessional and low-quality fact-finding directly affects the outcome of a case; hence the importance of the Tribunals examining and controlling the compliance of the proceedings, not only over the procedure before the same Tribunal, but also over the investigation. The Panel takes note that a special assessment on this topic is already under way and trusts that the Tribunals' decisions regarding the requirement of counsel at the investigation stage will be taken into account.[84]

256. That said, the minimum content of due process regarding other dimensions of the system of administration of justice needs to be determined. A system of administration of justice consistent with the principle of due process guarantees a set of rights for the staff members and requires that the procedure be structured in a certain way. Among the first, staff members are entitled, among other things, to the assistance of counsel, to an unbiased tribunal, to support their allegations by argument and by presenting evidence, to an oral hearing when required (especially when fact-finding issues are under discussion) and to confront and cross-examine the evidence presented by the counterpart. The Panel is satisfied that these requirements are met.

257. Below, the Panel comments on some specific issues concerning due process within the system of administration of justice.

Right to an effective recourse

258. According to international instruments on human rights, due process guarantees a right to "simple and prompt recourse, or any other effective recourse".[85] This right is enhanced within the internal system of administration of justice at the United Nations, given that staff members are unable to resort to

[83] Such as in *M'Bra* (UNDT/2010/185).

[84] See *Applicant* (2012-UNAT-209) and *Cobarrubias* (UNDT/2013/164).

[85] See article 25 of the American Convention on Human Rights.

national courts. The Secretary-General has repeatedly argued that, pursuant to article 2 (1) of the statute of the Dispute Tribunal, staff members' applications to the Tribunal contesting decisions by independent offices are not receivable because they do not constitute administrative decisions.[86] The Tribunals, however, have decided otherwise.

Rules of procedure

259. Lastly, a system of justice consistent with due process requirements presupposes clear procedural rules. There is currently a lack of procedural uniformity in the working of the Tribunals. The rules of procedure are not sufficiently detailed or are still missing in several areas, leading judges to interpret and create their own, with differing effects. Currently, consistency of proceedings is not guaranteed. This is one reason why uncertainty and lack of predictability have become an issue in the administration of justice. The rules should also stipulate deadlines for the issuing of judgments, given that they are sometimes issued with undue delay. Judges of both Tribunals are aware of the flaw and are working towards achieving harmonization of procedures in order to eliminate unpredictability. If the system is to be protected against any adverse impact, however, the issue must receive greater priority and results need to be achieved more urgently.

Access to documentation by staff members

260. On the other hand, to plan and develop an effective defence, staff members need to have access to certain documents relevant to the case that could serve as basis for a favourable decision. In most cases, staff members do not have access to documentation in the hands of the Administration or, at most, receive access only once the procedure has begun. Clearly, in those circumstances, there is no equality of arms between the staff member and the legal office representing the Secretary-General. On the other hand, in the Management Evaluation Unit process, staff members seeking an evaluation must share their (legal) arguments with management. The adequate and timely exercise of a right to defence presupposes access to all the documents relevant to the case, also during the pre-trial and other early stages, including the management evaluation and the negotiations of a prospective settlement. The United Nations system must be improved in this respect.

Extension of time limits

261. Although respecting time limits is fundamental for the appropriate operation of a justice system, different stakeholders agree on the need to extend or suspend the statutory deadlines for applying to the Dispute Tribunal.[87] Stakeholders have submitted that sometimes the time limits frustrate the negotiations between the Management Evaluation Unit and the staff members, which otherwise could lead to a settlement of the case and therefore prevent litigation.[88] The Internal Justice

[86] In, for example, *Lubbad* (UNDT/2013/132), *Kunanayakam* (UNDT/2011/006), *Comerford-Verzuu* (UNDT/2011/005) and *Koda* (2011-UNAT-130), the applicants contested OIOS decisions. In *Hunt-Matthes* (UNDT/2011/063) and *Wasserstrom* (UNDT/NY/2009/044), the applicants contested determinations made by the Ethics Office regarding retaliation.

[87] See article 8 (1) (d) of the statute of the Dispute Tribunal and article 7 of its rules of procedure.

[88] See A/70/187, para. 27.

Council has recommended that, if both parties wish to pursue efforts to settle and therefore apply to the Dispute Tribunal for an extension of the time limit to lodge an appeal, the Tribunal should have the authority to extend such time limits.[89] The Panel agrees with this.

262. The Panel sees three solutions to this problem. Deadlines could be extended by modifying the relevant rules. Although a direct solution, it would broaden time limits for all cases, regardless of a concurring need to do so in virtue of a continuing negotiation. Another way would be the development of a steady judicial practice of interpreting and applying in a flexible fashion the rules that allow the suspension or waiving of the deadlines in exceptional cases[90] or when the interests of justice so require.[91] Lastly, a rule could be set that would allow the parties to agree to the suspension of deadlines for a limited period, with the Dispute Tribunal's approval, whenever there were pending negotiations.

Self-representation before the Tribunals

263. The high rate of self-representation before the Tribunals is cause for concern. In 2014, most staff members acted *pro se*: 60 per cent at the Dispute Tribunal and 72 per cent at the Appeals Tribunal. Self-representation increases the workload of the Registrars and the Tribunals and affects the efficiency and professionalization of the system. From a due process point of view, it means that many staff members resort to the system lacking a technical defence, which hinders the full exercise of their rights.

Oral hearings

264. The Panel has heard concerns regarding the absence of a right to oral hearing both in the statutes of the Tribunals and in the practice adopted by them. In the Panel's view, the rule of law requirements and due process principle mandate adequate opportunity to be heard. The Tribunals generally do satisfy the requirement because they receive comprehensive written submissions and documentation to substantiate the case of the parties. The concern is valid, however. A procedure consistent with due process requirements should secure a right to an oral hearing in cases involving disputed issues of fact[92] or a referral for accountability (see para. 276). This applies in particular to disciplinary cases in which serious factual contentions may be involved. The Panel draws attention to the fact that, although the Appeals Tribunal has the power to hold oral hearings, it makes very little use of the mechanism, deciding to proceed solely on the basis of written documents.

[89] See A/70/188, para. 94; see also paras. 16 and 93 of that document.
[90] See article 8 (3) of the statute of the Dispute Tribunal and article 7 (5) of its rules of procedure.
[91] See article 35 of the rules of procedure of the Dispute Tribunal.
[92] See, for example, article 10 of the Universal Declaration of Human Rights.

G. Rights and obligations of staff members and the accountability of managers and staff alike

Accountability

265. Accountability, i.e. the obligation of the Organization and its staff to be answerable for their decisions and actions, is a stated objective of the United Nations and many components have been developed in terms of achieving results, including the establishment of internal control systems, common standards and oversight mechanisms, in particular since 2005, one of them being the introduction of the new justice system, which, is aimed at, among other things, ensuring the accountability of managers and staff members alike. All these components have, however, resulted in a patchwork of elements and processes, which has some gaps. Currently, the United Nations has no overall policy on accountability of individuals or offices and corresponding processes to implement and enforce it. It needs such an overall system urgently. The Redesign Panel considered the boards of inquiry, which investigate incidents in peacekeeping missions involving nationals of the host country and/or significant damage to United Nations property, to be an important component of the internal justice system and the administration of justice in peacekeeping missions and recommended their strengthening.[93] The Panel notes that many of the shortcomings of the system have not been addressed and agrees that the lack of consistency and effective functioning has an adverse impact on the image of the Organization, especially in cases of allegations of sexual exploitation and abuse in peacekeeping missions.

266. The General Assembly, in its resolution 68/254, stressed the importance of the principle of accountability and the United Nations commitments to justice and human rights for all. That principle holds true when considering the administration of justice for staff members, non-staff members and other categories of personnel alike. In Beni and Goma, the Panel received reports of civilians endeavouring to seek justice from MONUSCO for the alleged rape of young girls by United Nations personnel.

267. There is no system for protection of victims and witnesses on the ground and United Nations staff who face those realities often use their own funds to respond to pleas for medical or funeral expenses. The duty of the Organization is to investigate and hold staff accountable for their wrongful acts. However, investigators face enormous challenges in terms of language, travel over distances and communication and securing the cooperation of national service providers, such as police officers, forensic scientists, doctors and registries of national courts, who expect to be paid for their cooperation. Preliminary investigations are, nevertheless, conducted in the field, but mission heads are not authorized to place suspected staff on administrative leave with or without pay or to refer them to national authorities unless authorized by the Office of Human Resources Management. In addition, the Office often terminates the investigation without reference to the mission. The Panel learned from the Office that that was because the field was not equipped to conduct investigations in accordance with the standards determined by the Tribunals. Accordingly, impunity reigns within the United Nations, with an impact on victims, on staff morale in the field and on the overall image of the Organization.

[93] See A/61/205, paras. 33 and 34.

268. It is important that heads of United Nations field missions be granted delegated responsibility to take charge of conduct and disciplinary cases and be properly resourced to do so. The United Nations has not only the responsibility to investigate and hold staff responsible, but also to provide justice to any person who has allegedly suffered harm as a result of acts or omissions by the Organization or its personnel. This is particularly needed where the individuals or groups have no other recourse to justice, for example where actions in national courts are not feasible or the privileges and immunities attaching to the United Nations prevail. Leaving the prosecution of perpetrators of sexual exploitation and abuse in peacekeeping missions to national authorities, which often do not act, does not contribute to the overall sense of justice for which the United Nations stands.

269. In paragraph 233 above, the Panel quoted the Secretary-General when he observed that, as an organization involved in setting norms and standards and advocating the rule of law, the United Nations had a special duty to offer its staff timely, effective and fair justice that fully complied with applicable international human rights standards. The principle should be extended to close the gap that exists in providing justice to those aggrieved by acts or omissions of the Organization or its personnel and who have no other legal recourse to justice.

270. The Panel further encourages a comprehensive review of the accountability framework for United Nations peacekeeping, ensuring that transparency and impartiality are adhered to in all its missions and human rights fully respected.

Referrals for accountability within the justice system

271. As practice has shown, accountability issues do arise in the internal dispute resolution process. Early attention must then be given to them, for example at the level of the Management Evaluation Unit, and action be taken accordingly, thereby limiting the need for a judge to make a referral.

272. An internal justice system can obviously play only a small part in ensuring accountability, given that it, after all, deals exclusively with employment and administrative law issues. The statutes of the Dispute Tribunal and the Appeals Tribunal, in articles 10 (8) and 9 (5), respectively, indeed do provide that the Tribunals may refer appropriate cases to the Secretary-General or the executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability.

273. Until mid-2015, the Dispute Tribunal had made 21 such referrals for accountability (in 19 judgments and two orders) and the Appeals Tribunal only in one case, where, in fact, the Dispute Tribunal had not made a referral. This is a small number compared with the total number of judgments rendered. Of the 21 Dispute Tribunal referrals, 16 (76 per cent) were made in Nairobi and the remaining 5 in New York. Only 5 referrals were affirmed on appeal, with 12 (57 per cent) vacated. Two cases are currently under appeal. The others were not subject to appeal.

274. In the first "referral" case,[94] the Appeals Tribunal held that article 10 (8) of the statute of the Dispute Tribunal meant "exactly what it [said], which is exactly what the trial court [had done]". Practice since then shows, however, that the Tribunals

[94] *Abboud* (2011-UNAT-103).

have given wide-ranging interpretations to the provision and that they do not always have the same view on both the scope and the application of the clause.

275. First, the Tribunals have held that, although the texts provide that they may refer "cases", nothing prohibits them from referring identified individuals (or even complete offices).

276. Consequently, in some 20 cases staff members have now been "named and shamed"; it is recalled that, while more than half of the referrals were subsequently vacated by the Appeals Tribunal, the record is not expunged. In some other cases, staff were negatively mentioned repeatedly without an official referral being made. This raises important questions of due process. The Dispute Tribunal, in its first referral case,[95] held that "in fairness such a decision should not be made without hearing from the parties". Since then, however, many of the staff members concerned were not heard at all. In the most recent case, a referral was, in fact, made in an order on suspension of action, i.e. before the case was heard on the merits, with the argument that there is nothing in article 10 (8) that would restrict its application to cases heard on the merits. Moreover, the wording used in some judgments is unbalanced and accusatory in nature. Some staff members have been seeking to have their names removed, to no avail to date. It is to be emphasized that the role of a labour court is to rule on the legal questions put before it. Judges should not become prosecutors and it is not their role to expose staff members publicly in a labour law context.

277. Second, the clause has been invoked by the Dispute Tribunal in questionable ways and circumstances. For example, it was used as an alternative to exemplary or punitive damages, even though article 10 (7) of the Tribunal's statute explicitly provides that the Tribunal is not to award such damages. The Tribunal has also used it as a sanction for contempt of court, but was overruled by the Appeals Tribunal, which found that the Dispute Tribunal had exercised its statutory authority improperly in making article 10 (8) referrals under the guise of sanctions for contempt.

278. Moreover, the Dispute Tribunal has made a referral in an obiter dictum in a case that was withdrawn and thus had become moot. The judgment was subsequently vacated by the Appeals Tribunal. The Dispute Tribunal has also made referrals as a statement on hypothetical situations, as a warning that any breach of an order could trigger the application of the accountability provision.

279. The Dispute Tribunal judges have repeatedly requested to be informed of the outcome of the referral, initially "as a matter of courtesy", but recently with the argument that because the Tribunal initiated the accountability process it should be apprised of its outcome. This was correctly overturned by the Appeals Tribunal when it held in *Assale*[96] that the Dispute Tribunal "exceeded its competence when it improperly requested to be informed of the outcomes of both referrals. There is no statutory authority for that request, as the [Dispute Tribunal] acknowledged, and the request gives the appearance that the [Dispute Tribunal] has become an advocate and is no longer neutral."

280. It is true, as the Dispute Tribunal observed, that there is no record of action taken by the Secretary-General in this respect. The Panel has, however, been

[95] *Abboud* (2010/UNDT/001).
[96] 2015-UNAT-534, para. 46.

informed that all referral cases are reviewed and that the staff members concerned are advised of their outcome. Consideration must be given, however, to how the United Nations community as such can be informed, in a redacted form if necessary, so that this becomes part of the "law of the land" and, if it turns out that a staff member has been wrongly referred, his or her name is publicly cleared.

281. The Tribunals can, and must continue to, play their part. The Panel is therefore not proposing to delete the corresponding provisions of their statutes, but is insisting that more precision be given to their scope and use. Particular care must be taken so that the Tribunals do not become prosecutors. Judicial restraint is important in this respect. Second, referrals should be made only when the persons concerned have been properly heard. In addition, due diligence is required in order to avoid unnecessary publication of names, especially in versions that can be searched using electronic search engines.

282. It is acknowledged that the Appeals Tribunal has recently refined its position on some aspects of the referral mechanism, but the Panel feels that it is important for an in-depth assessment to be made and for its scope and application to be refined, most likely through a meeting of stakeholders, including the judges, under the auspices of the Internal Justice Council (or its Chair). If that is not done swiftly and properly, the referral clauses will soon lose their strength.

283. A further sanction is, of course, to hold individual staff accountable where violations of the rules and procedures have led to financial loss. This is a delicate matter, in particular in an employment context. This is probably also why the Secretary-General has to date not submitted specific proposals to the General Assembly in this respect.

Rights and obligations of staff members

284. It is a fundamental right of staff to have unimpeded access to the justice system, free from repercussions. As the increasing number of appeals shows, there appears to be less fear than before of using the system, but many have also expressed the view that staff are afraid of repercussions.

285. As a corollary to the right of access, staff have the obligation not to abuse the right. They should not lodge vexatious or frivolous appeals. Management may not always like an appeal, but that in itself does not render it frivolous. The number of such appeals is limited.

286. Article 10 (6) of the Dispute Tribunal's statute provides that, where the Tribunal determines that a party has manifestly abused the proceedings before it, it may award costs against that party. The Tribunal has already awarded costs under this head. This is the right approach and the Panel does not feel it necessary to propose additional disincentives, such as the deposit of a sum as security. On the other hand, the Tribunal should in these instances also make more use of its powers to proactively manage cases and/or to summarily dismiss a case if it is clearly inadmissible.

287. Parties should also not overburden the Tribunals with unnecessary arguments and documentation. The Dispute Tribunal has held as follows:

> The Tribunal is concerned at the huge volume of unnecessary as well as irrelevant material that has been filed by the Applicant thereby imposing an

onerous burden on the Tribunal at the expense of other cases awaiting a judicial determination. There is a duty, on all concerned, to ensure that there is a structured and concise presentation of claims before the Tribunal.[97]

H. Informal system

288. It is generally recognized that informal conflict resolution is of fundamental importance because it avoids unnecessary litigation and is conducive to a good work environment. It is also commonly understood that more use should be made of that system and that the success rate of the informal process is very important in order to further improve its effectiveness and to promote a wider application of informal mechanisms.

289. The informal system extends beyond the work of ombudsmen and mediators. It comes into play whenever a third party may be involved in resolving a dispute: it may be a trusted colleague, a peer support volunteer or a medical officer, for example.

290. Although the terms of reference of the Office of the United Nations Ombudsman and Mediation Services have not yet been promulgated by the Secretary-General, the guiding principles of its work are well established.[98] They are confidentiality, neutrality, independence (discussed above in section IV.A) and informality.

291. This set of principles, first, distinguishes the informal system from the formal system, which is built around the principles of judicial independence and separation of powers and characterized by transparency. Second, the very principles that enable the informal system to accomplish its goals have at the same time the effect of reducing its visibility, including to potential users. To address this issue, the Office of the United Nations Ombudsman and Mediation Services, in the view of the Panel, should publish model cases as an incentive for aggrieved staff members to approach the informal conflict resolution system.

292. The role of an ombudsman or a mediator is to facilitate conflict resolution without imposing possible solutions, leaving a visitor or the parties to the mediation in full control of the outcome. Sometimes, the features characterizing the work of the informal system lead to criticism to the effect that the United Nations Ombudsman has no real authority and that the process does not create accountability for managers. This is a misconception: the limitations inherent in the informal system are at the same time its advantages, allowing it to be of use in resolving conflicts discreetly and to the satisfaction of the parties involved.

293. Given this, the human factor is clearly very important in the workings of the informal system. A successful outcome depends on the skills and attitude of an ombudsman, a mediator or a trusted colleague, as well as on the general position adopted by the Administration to conflict management. This largely explains the fact that some agencies, funds and programmes appear to settle more conflicts informally than others, and more than the Secretariat, although in the latter case one of the problems is the sheer size and complexity of the institution.

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[97] *Flaetgen* (UNDT/2014/102).

[98] See, for example, A/69/126, paras. 6-10.

294. As to recourse to the Office of the United Nations Ombudsman and Mediation Services, staff members are, under staff rule 11.1 (a), encouraged to seek to resolve conflicts relating to their contract or terms of appointment informally. Both the staff member and the Secretary-General may, under staff rule 11.1 (b), initiate informal resolution, including mediation, of the issues involved at any time before or after the staff member chooses to pursue the matter formally. Granted, the informal conflict resolution, including mediation, is a voluntary process. Nonetheless, in the view of the Panel, managers should be encouraged to respond to the mediation attempts positively, at least giving it a try, and to be more proactive in initiating a mediation process themselves. Furthermore, once mediation is set in motion, one of the essential conditions for its eventual success, and for the credibility of the process in general, is the certainty that the authority to finalize the settlement is duly delegated to the person participating in it on behalf of management. These issues should be addressed and monitored on a continuing basis by the Secretary-General and the executive heads of the relevant United Nations entities.

295. Many issues do find resolution in the informal mechanism, although it is recalled that some interviewees said that they had received good advice but not resolution. The Panel has the impression that more cases could be resolved in the informal system, in particular career-related and/or interpersonal issues, before they reach the formal system.

296. Article 10 (3) of the statute of the Dispute Tribunal provides that, at any time during the deliberations, the Tribunal may propose to refer the case to mediation. With the consent of the parties, it is to suspend the proceedings for a time to be specified by it. If a mediation agreement is not reached within that period, the Tribunal is to continue with its proceedings unless the parties request otherwise. Details are laid down in rule 15 of the rules of procedure. The formal system does indeed refer cases to mediation, representing 25 per cent of all mediation cases, but the results are mixed.

297. Conflict management is a crucial element in day-to-day administrative work. It is important, therefore, that managers receive proper training upon their appointment and thereafter when appropriate. Furthermore, the managerial culture should be adapted to create incentives for conflict resolution and disincentives for the lack of engagement in this respect. Issues must be resolved and not escalated.

I. Formal system

Management Evaluation Unit

298. The Management Evaluation Unit was established by the General Assembly as a part of the new internal system of justice in order to put in place a process for management evaluation that was efficient, effective and impartial.[99] In addition to carrying out the mandatory management evaluation of contested administrative decisions in non-disciplinary cases, the mandate of the Unit includes informal resolution of disputes, assisting in ensuring accountability and providing guidance for better managerial practices and decision-making. It is clear that the General Assembly envisaged a role for the Unit in promoting certain aspects of the overall objectives of the current internal justice system.

[99] Resolution 61/261, para. 25.

299. The process of management evaluation and other functions of the Unit are expected to contribute towards transparency in decision-making and improving the quality of administrative decisions by enhancing understanding of rules and procedures among managers. The review also provides the Administration with an opportunity to correct the contested decision if it is found to be in violation of the rules and regulations of the Organization. At the same time, the practices adopted in conducting a management evaluation, or in attempting dispute resolution at the informal level, are intended to have a positive impact on the staff-management relationship and in preserving a work environment conducive to better performance by both managers and staff. Strengthening accountability based on a review of administrative decisions at this stage is also an expectation that the General Assembly and the Secretary-General have repeatedly expressed. The Panel takes these expectations into consideration in its assessment of the Unit as an element of the internal justice system as envisaged by the Assembly.[100]

300. The Unit is composed of legal professionals who are required to perform a legal analysis of the contested administrative decision to determine its compliance with the rules and regulations. The Panel has noted that specific provisions regarding the management evaluation process and the functions of the Unit are now defined in statutory rules.[101] This means that, with regard to the scope of its functions, the Unit is guided by statutory provisions and not only by policy or practice. In his reports to the General Assembly on the administration of justice at the United Nations, the Secretary-General has reported that management evaluation responses are "well reasoned" and set out the basis for the evaluation. This gives an assurance of professionalized scrutiny of contested decisions.

301. The Panel has taken note of statistics published by the Administration to show that the Dispute Tribunal has ruled in favour of most of the administrative decisions that the Unit has upheld in the management evaluation. The Panel also notes, however, that those statistics can be interpreted differently. For example, the figures for 2014 can be read to show that, of the 320 cases disposed of by the Tribunal in 2014, only 37 per cent were decided in favour of the Administration.[102] The Panel therefore sees the statutory prescriptions and quality of management evaluation letters issued as the outcome of the process as more reliable indicators of the professionalization of the process.

302. Staff rule 11.2 (d) and Secretary-General's bulletin ST/SGB/2010/9 require the Unit to respond to a management evaluation request within a specified time limit.[103] While the timeliness of management evaluation responses affects the efficacy of the system in different ways, it also has a nexus to the professionalism of the Unit in the performance of its functions. The Panel agrees with the Secretary-General that a response from the Management Evaluation Unit in a thorough and timely manner is essential to the successful fulfilment of its mandate.[104] The Panel draws attention to the fact that staff members are also bound by timelines for filing management evaluation requests and instituting proceedings before the Tribunals, which are strictly applied. A time-bound evaluation process supports the expeditious resolution

[100] Ibid., para. 4.

[101] See staff rule 11.2 and ST/SGB/2010/9, sect. 10.

[102] See A/70/187, para. 24 and fig. IV.

[103] Within 30 calendar days of receipt if the staff member is stationed in New York and within 45 calendar days otherwise.

[104] See A/65/373, para. 10.

of disputes. Respect for the prescribed time limits would therefore be an important criterion for determining the level of professionalism that the process has achieved.

303. In its twelfth biannual report to all heads of departments and offices dated 3 October 2014, the Unit acknowledged that 37 per cent of responses (in 341 requests for management evaluations) were processed beyond the 30-day or 45-day timeline. In his most recent report to the General Assembly on the administration of justice, the Secretary-General recognized that meeting statutory deadlines was still proving a challenge for the Unit.[105] A number of stakeholders have also indicated this as a shortcoming in the evaluation process. The Unit, in its twelfth biannual report, identified factors impeding the timely completion of management evaluations, including a heavy workload, inadequate human resources and the time consumed in consultation with decision makers in efforts to resolve the dispute informally at this stage and in data entry and database maintenance.

304. It is true that the completion of the management evaluation process and the delivery of the outcome are not dependent solely on the Unit and the involvement of other actors may present added complexities and delays in the process. It nevertheless remains a responsibility of the Unit to ensure that functions are carried out in compliance with statutory provisions by adopting methods of work that allow it to overcome the challenges that it is currently experiencing. At the same time, it is for the Administration to ensure that the machinery that it has put in place functions efficiently and is sensitive to the rights of staff members.

305. The Panel does not agree with the view that flexibility in the application of time limits would remove the constraints. Too much flexibility could, on the contrary, encourage laxity in fulfilling the requirements of the system on time and delays could become institutionalized. The rules already provide for the relaxation of time limits where an objective review of circumstances supports such a decision. Arrangements to resource the mechanisms adequately and to develop methods of work that meet the statutory requirements would be more suitable for overcoming the challenges. Timely dispensation of justice is a core objective of the internal justice system that should not be compromised by inadequacies in the implementation mechanisms.

306. One cause of delays in completing management evaluations is the centralization of the process in the Secretariat. The Unit serves entities of the Organization encompassing almost 45,000 staff members, including those in the Secretariat, offices away from headquarters and field missions. Staff members filing their management evaluation requests from locations away from the Secretariat are more likely to suffer delays in receiving the final outcome of the evaluation. As has been explained by the Unit in its biannual reports, the management evaluation process is a collaborative one, entailing consultations with decision makers, managers and staff members. The Panel believes that the concerns that it has heard regarding delays caused and the inadequacy of consultations because of the distance of the aggrieved staff member, the manager concerned and other decision makers are justified. A degree of decentralization and Unit presence in offices away from headquarters, especially field missions, would alleviate the shortcomings and add to the efficiency of the process. It would, however, be essential to ensure that

[105] A/70/187, para. 27.

consistency in the practices and methodologies of the evaluation process is not compromised.

307. The statistics published by the Administration indicate that the Unit has had moderate success in informal settlement of disputes.[106] It is evident, however, that a substantial number of staff members do not proceed to litigation after the administrative decision that they had contested is upheld by the management evaluation. In this respect, the management evaluation process is a successful filter and its establishment as a first step in the justice system has served the objective of limiting the caseload of the Tribunals.

308. A critical element of the mandate of the Unit is monitoring the use of decision-making authority to identify trends that steer decision-making and management practices and to make recommendations to address those that need to be reformed. There is no additional function associated with this element of the mandate. It is through the process of management evaluation of administrative decisions that the Unit is meant to gain such insights and to correct flaws in order to inculcate a managerial culture that is compatible with the Charter and the internal rules and regulations. Fulfilment of this responsibility requires both vigilance and diligence on the part of the legal professionals in the Unit in order to ensure consistency in reporting trends and persistence in following up on their recommendations. It is also important that their perspective not be limited to exigencies of management, but encompass the imperative of legal compliance and respect for the rights of staff members and accountability of managers.

309. The Department of Management had initiated the production of a lessons-learned guide for managers, but this was discontinued after 2011. The Unit, however, continues to publish a biannual report of its activities that includes some aspects of lessons learned and offers guidance to managers in the light of trends that it has discerned in the process of management evaluation and the jurisprudence of the Tribunals.

310. These Unit reports inform the reports of the Secretary-General on the administration of justice to the General Assembly and are circulated to all heads of departments and offices in the Organization. Not being officially published documents of the United Nations, they are not a substitute for the lessons-learned guide that was more widely accessible and could provide information to other stakeholders, including staff members, on trends in decision-making. This would lend more transparency and credibility to the management evaluation process.

311. These efforts of the Unit and the Department of Management should have a positive impact on the use of decision-making authority and the management culture. It is a view expressed by the Administration in general that regular feedback from the Unit has changed management practices in the Organization and the approach of managers in resolving management issues. Yet, the issues brought before the formal and informal mechanisms of the system of administration of justice reveal the persistence of decisions based on flawed reasoning or understanding of the applicable law. The repetition of flawed decisions that result in disputes even after the system has been in operation for six years remains inexplicable. It appears that more effective means of creating awareness and

[106] Some 9 per cent of the total number of cases closed by the end of 2014 (see A/70/187, para. 22).

upholding accountability are needed to achieve the desirable level of impact on managerial performance.

312. The Panel recommends that the Department of Management resume the publication of the guide for managers identifying the systemic issues. It may also be necessary to provide more extensive guidance both on rules and regulations and their proper application that is derived from the jurisprudence of the Tribunals. In addition, the Department should explore other means that can be pursued, in collaboration with other sectors in the Organization, to ensure serious attention by management-level personnel to the guidance provided by the Department and the Unit.

313. The funds and programmes retain the old process of administrative review within their own agencies. However, the relevant statutory rules and regulations applicable to management evaluation by the Unit also apply to them. The Panel has learned that management review of contested administrative decisions in these entities is generally completed on time, but the management evaluation responses are rarely detailed and lack sufficient reasoning to be qualified as "well reasoned". At the same time, informal resolutions through more dialogue with the parties are also more common in the funds and programmes. The Panel found it encouraging that a less formal environment in most of those settings allowed meaningful engagement between the parties and could result in a more fruitful outcome to prevent the cases from proceeding to litigation.

314. Above, the Panel expressed its view that, even though the General Assembly referred to the Unit as independent,[107] it was, structurally and functionally, a part of the Administration. In the opinion of the Panel, the absence of independence, in this case, has no adverse impact on the fairness of the proceedings that it conducts. However, every element of the proceedings must be conducted in an objective and impartial manner to preclude any perception of a conflict of interest. It is not enough that the Unit operates independently from decision makers whose decisions are subject to management evaluation — the evaluation process must demonstrate both an objective analysis of the decision and an impartial assessment of the circumstances in which the dispute has arisen.

315. There are concerns that, where management evaluation requests are rejected as non-receivable, no substantive response specifying the reason for the finding is given in the letter. When a case is settled, reviewed or changed by the Administration upon a proposal by the Unit, it is classified as "moot" and the statistics do not include such cases in the category of administrative decisions that were reversed. No management review letter is issued and, even though the remedy provided may be recorded in the statistical information, the administrative decision escapes being recorded as illegal. This practice may have consequences for the accountability of managers and for the repetition of mistakes that burden the system of administration of justice. The advantages that the justice system draws from informal resolution of disputes would certainly be enhanced if the informal processes contributed more towards improved governance and stronger accountability.

316. According to information received by the Panel, a staff member contesting an administrative decision is required to place all documents on record and to give a

[107] Resolution 62/228, para. 52.

comprehensive explanation of his or her legal position during the management evaluation process. The information is made available to managers and legal officers responding on their behalf to questions put by the Unit. However, no information on the explanation offered or the documents produced to support the position taken by management is communicated to the aggrieved staff member. The lack of equal access to information by both sides affects the principles of transparency and equality of arms, especially if the case proceeds to litigation. In such a case, one side would be better prepared than the other on the basis of information that it already had on the opponent's case before the Dispute Tribunal.

317. A more serious concern with regard to the functioning of the Unit arises in cases involving suspension of action. Under staff rule 11.3 (b) (i), a staff member may apply to the Dispute Tribunal for the suspension of implementation of a contested administrative decision until the completion of the management evaluation. The Tribunal is bound to take a decision on such an application within five working days of service of the application on the respondent. The application becomes infructuous if the management evaluation is completed before the Tribunal makes an order.

318. It has been pointed out to the Panel that the management evaluation in suspension of action cases is conducted hurriedly in order to prevent a suspension of action order. The Panel recalls that the Unit ordinarily finds it a challenge to complete a management evaluation within the statutory time frame. It has also acknowledged that high-quality responses can be formulated only after receiving further comments from managers and consultation with decision makers. On the one hand, hurriedly completed management evaluations would raise concerns regarding their quality. On the other, it would be difficult to disregard the criticism that the hurried disposal of management evaluation requests in suspension of action cases is used frequently as a tactic to frustrate an interim remedy sought by staff members. The Panel fears that such "tactics" undermine the objectivity and impartiality of the Unit and raise doubts about the integrity of the management evaluation process.

319. The Panel concludes that the Unit performs an important function within the internal justice system. It performs its functions with professionalism, its inadequate resources notwithstanding. The challenge of providing high-quality evaluation output within the statutory time limits needs to be overcome, however. Demonstrating objectivity and impartiality in its methods of work can strengthen the credibility of the process of evaluation. Avoiding practices that could be construed as a conflict of interest can allay any negative perceptions.

Office of Administration of Justice

320. The General Assembly decided to bring together a number of important components of the justice system into a single administrative unit. It established the Office of Administration of Justice, comprising the Office of the Executive Director, the Office of Staff Legal Assistance and the Registries of the Tribunals.[108] The Executive Director is responsible for the management of the Office of Administration of Justice.

321. The Panel has made recommendations elsewhere herein concerning the Office of Staff Legal Assistance, the Registries and the Principal Registrar. It is of the

[108] See resolution 62/228.

opinion that no further adjustments are necessary to the set-up of the Office of Administration of Justice.

Office of the Executive Director

322. The Office of Administration of Justice is now well established. The functions, roles and responsibilities of the respective stakeholders are well respected by all. A perception unfortunately persists that the Office is too close to the Tribunals and reference is often made to the proximity of the respective offices in New York. It is proposed, to dispel the perception, to reorganize the distribution of offices at Headquarters. The Panel finds no support, however, for another perception, as expressed by some, that the Office is dependent on the Secretary-General.

323. The Office not only contributes to the smooth functioning of the justice system, but also is responsible for the annual report on the administration of justice and makes the justice system better known to United Nations staff and the public at large. It provides adequate support to the Internal Justice Council. The Office is to be commended for its outreach activities with the limited resources available.

Office of Staff Legal Assistance

324. To establish a professionalized system of justice and to guarantee equality of arms before the courts, the Redesign Panel proposed an office of counsel, which was to replace the Panel of Counsel.[109] The latter provided assistance through colleagues, on a voluntary basis, and had no presence in peacekeeping missions and other field duty stations.

325. The Panel recognizes that the Office of Staff Legal Assistance is a major improvement in comparison with the old system of administration of justice. It provides professional legal assistance to staff members, either before the courts or in the pre-litigation phases (such as before the Management Evaluation Unit), being an important element of the professionalized character of the system. With full-time officers in New York, Geneva, Nairobi, Addis Ababa and Beirut, it also plays a remarkable role in the decentralization of the system and in granting access to justice to staff members in the field (see para. 228).

326. As has been highlighted before, it is inappropriate to understand the Office as a "filter" of the system of administration of justice — as both the General Assembly[110] and the Secretary-General[111] have described its role. In fact, in the opinion of the Panel, this may have contributed to spreading the (misleading) perception that the Office acts as part of management. Unfortunately, that misunderstanding has even pervaded the Tribunals to some extent. The Dispute Tribunal has asserted that the Office is part of "the core [United Nations] administrative machinery".[112] Accordingly, granting the Office's legal officers a "functional exemption" from staff rules that may be incompatible with the independence that they require to perform their counsel duties, as the Panel has suggested above (see para. 172), should contribute to a better and more correct understanding of the Office as part of the internal justice system.

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[109] See A/61/205, paras. 107-111.

[110] For example, resolution 68/254, para. 18.

[111] For example, A/69/277, para. 96.

[112] See *Worsley* (UNDT/2011/024), para. 25, and *Worsley*, Order No. 079 (GVA/2010).

327. A related issue concerns the Office's standard for deciding not to represent a staff member before the Tribunals.[113] Pursuant to staff rules 11.4 (d) and 11.5 (d), if a staff member so wishes, he or she is to have the assistance of counsel through the Office in the presentation of his or her case before the Tribunals. As decided by the Tribunals, those provisions guarantee every staff member a right to legal assistance, but do not necessarily comprise a right to legal representation by the Office. In other words, a legal officer from the Office can reject a case when, the Panel has been told, it does not present a reasonable chance of success. This rule has a solid ground: lawyers, even institutional ones, must have some legal room for deciding whether to take a certain case. In the view of the Panel, a certain degree of discretion in this matter is part of what being a good lawyer is about.

328. In the view of the Tribunals, however, that discretionary capacity is not unfettered.[114] Although the Panel shares that view, it does not adhere to the conclusion in the sense that the decision of the Office's legal officer not to represent a staff member is an administrative decision, as stated in *Worsley*. According to the Tribunals, the relationship between the Office and the Secretary-General is of a hierarchical nature, given that the Chief of the Office is, pursuant to Secretary-General's bulletin ST/SGB/2010/3, accountable to the Executive Director of the Office of Administration of Justice (see para. 169). Although the Office of Staff Legal Assistance enjoys functional or operational independence, i.e. its legal officers do not receive instruction from the Administration when providing counsel to staff members or representing their interests, for the Tribunals that "operational independence" does not prevent considering the decision not to represent a case to be an administrative decision pursuant to article 2 (1) of the statute of the Dispute Tribunal. That decision would allegedly satisfy the *Andronov* standard,[115] and therefore the Secretary-General is responsible for it as the chief administrative officer of the United Nations, although he is not involved the decision-making process.

329. In the view of the Panel, the issue would be better addressed by enhancing the protection of the relationship between a legal officer of the Office of Staff Legal Assistance and the staff member requiring his or her assistance, as a counsel-client relationship. A direct consequence of that special protection would be that the Secretary-General should by no means exercise any sort of control over the Office's operational decisions and could not be held liable for those decisions.

330. This should not be understood in the sense that the decision not to represent a staff member is unchallengeable. If the Office's legal officers act as counsel, i.e. having in mind the best interests of their clients, the Panel believes that the mechanism for contesting such a decision should be based on ethical and

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[113] See, for example, *Worsley* (Order No. 079 (GVA/2010), UNDT/2011/024 and 2012-UNAT-199).

[114] See 2012-UNAT-199, para. 36.

[115] According to the decision of the United Nations Administrative Tribunal in Andronov (judgment No. 1157, 2003), an administrative decision is a decision that carries direct legal consequences, that is made by the Administration and that is of unilateral and individual application, affecting the rights and obligations of a staff member directly. This definition has been adopted by the Tribunals in the new system. See, for example, *Worsley* (2012-UNAT-199, UNDT/2011/024), *Larkin* (2011-UNAT-135; UNDT/2011/028), *Koda* (2011-UNAT-130), *Kunanayakam* (UNDT/2011/006), *Comerford-Verzun* (UNDT/2011/005), *Tabari* (2010-UNAT- 030), *Schook* (2010-UNAT-013), *Buscaglia* (UNDT/2010/112), *Elasoud* (UNDT/2010/111), *Wasserstrom* (UNDT/NY/2009/044) and *Planas* (UNDT/2009/086).

professional grounds when declining representation for any motive other than the absence of a reasonable expectation of success. This matter should be addressed within the code of conduct for legal representatives (see para. 215).

331. In the same context, it is to be noted that, in the opinion of the Panel, the real problem is not the fact that the Office rejects cases, but rather that in some cases the application of the above-mentioned standard of reasonable chance of success raises some doubts as to its accuracy in the evaluation of the case presented by the staff member. For example, the Internal Justice Council has noticed that the Office has even declined representation in a case in which the Dispute Tribunal judge directly recommended that it should represent the applicant.[116] This could prompt the disturbing perception that the Office rejects cases mainly as a result of its scarce resources and overload, which, of course, would be an unacceptable criterion for deciding whether to accept or decline a case. Notwithstanding the above-mentioned reasons, every system of administration of justice needs some standard. The Panel considers that the criterion used by the Office, i.e. reasonable expectation of success, is a suitable one.

332. In another vein, the General Assembly recently decided to supplement the funding of the Office by a voluntary payroll deduction, from which staff could opt out, not exceeding 0.05 per cent of a staff member's monthly net base salary. The funding scheme was implemented on an experimental basis from 1 January 2014 to 31 December 2015.[117] Notwithstanding the steady high opt-out rates, the revenue has stabilized in the past year at around $60,000 per month.[118] Recently, the Secretary-General recommended extending the experimental period until December 2016.[119]

333. The Office is underresourced and its current budget, even supplemented by the voluntary funding scheme, is not sufficient to meet its needs. It is also widely outnumbered by the legal officers of its counterpart (the Administration), thus rendering equality of arms more difficult. Although a highly decentralized office, it has to deal with serious technical difficulties that hinder communication among its legal officers and their clients. With insufficient funding for travel to reach their clients, they cannot perform their defence tasks in the conditions demanded by the counsel-client relationship.

334. The issue of funding is problematic. The General Assembly established the Office, which since 2009 has functioned very well, not so much as a "filter", but as an advisory body for staff. The figures speak for themselves: it has given summary legal advice in almost 5,000 cases. In only 12 per cent of those cases did it subsequently provide legal assistance to staff before the Dispute Tribunal. This summary advice, which is the Office's core function, is beneficial to the staff, who this way have a first access to the justice system, where they receive clear advice about their case. As the figures show, however, in an overwhelming majority of cases the matter stops there, which is beneficial for the Organization as well. It is important and logical, therefore, that the basic function be guaranteed and that United Nations budget pay for this. It is clear, however, that, with the additional outreach activities that must be undertaken in order to familiarize more staff with

[116] See A/69/205, para. 133, and *Kasbale* (UNDT/2014/023).
[117] See resolution 68/254, para. 33.
[118] See A/70/187, annex III.
[119] See ibid., para. 128.

the justice system, additional staff will turn to the Office for advice. The Panel observed above that the Office was already currently underresourced and that adequate additional funding was necessary. This does not mean, in the view of the Panel, that the resources should be extended to any limit in the expectation that Member States will bear all the costs. Some contribution by staff to fund their defence is not unreasonable, as it is the case in many other organizations where such defence is, for example, organized and funded by staff unions, either directly or through insurance schemes.

335. The Internal Justice Council suggested that the Panel should consider, in the light of the practice of the administrative tribunals of other international organizations, whether the statutes of the Tribunals should be amended to provide for the award of costs to a successful applicant or appellant who had to use a private attorney. The Panel deals with this question below (see para. 355), but disagrees with the implied suggestion of the Council that such money is better spent on the Office of Staff Legal Assistance. The Panel agrees that the Office should have more resources, but equally underlines that staff must have the freedom to choose their counsel. The Office should not have a monopoly. Lastly, the Panel observes a gap in the grade structure of the Office. A P-4 position is missing, which should be remedied by upgrading one P-3 position.

Registries

336. The Registries are under the authority of the judges for judicial matters, but are administratively part of the Office of Administration of Justice. Each is composed of the Registrar and legal officers, selected by the Office. The Registrars report to the Principal Registrar.

337. The Dispute Tribunal has three Registries, one in each of its locations. Each Registrar is responsible for the management and proper functioning of the branch of the Tribunal in the relevant duty station.

338. The double reporting line renders the position of the Registrars delicate. Reporting to the Office of Administration of Justice, even if only for administrative matters, entails the risk, and certainly the perception, that the Office may influence the judicial work and touch on the independence of the judiciary. Registrars report to the judges for judicial matters, but also manage the staff and resources, which may entail friction with judges, in particular on case management issues. It is advisable to have a common and agreed approach in these matters.

339. The Dispute Tribunal Registrars communicate with one another and endeavour to maintain a harmonized approach to common issues, including the distribution of cases and caseload.

340. Given that the judges are responsible for the major part of the Registries' work, i.e. providing substantive, technical and administrative support to the judges in the adjudication of cases, the Panel finds it only natural that they are involved in the selection of Registrars and legal officers. It recommends that a proper process be developed to this effect.

341. The Panel is of the view that the Registries are adequately staffed, with the exception of that of the Appeals Tribunal. As mentioned above, the request for an additional P-3 post is pending and the Panel strongly suggests that it be granted.

342. The Principal Registrar has, de facto, a double function. On the one hand, he or she oversees the activities of the Registries. He or she is responsible for the publication of judgments and orders on the website and for the development and improvement of the search engine and e-filing tool. On the other hand, he or she is the Deputy Executive Director of the Office of Administration of Justice and advises the Executive Director on all administrative, personnel and logistical matters, including all budgetary matters, relating to the Registries' operational activities and participates in the preparation of reports and budgets, among other things. Most stakeholders have expressed satisfaction with those functions, although some would welcome more clarity as to the role of the Principal Registrar.

Tribunals

Issues common to both Tribunals

343. Having reviewed several conflicting judgments rendered by the Tribunals, the Panel agrees with the concerns expressed by many stakeholders regarding the lack of consistency in their jurisprudence. The Panel acknowledges that the system of administration of justice is still evolving and welcomes the efforts being made by both Tribunals to develop a more harmonized approach in their work. At the same time, however, the Tribunals have a critical role to play in guiding the overall system and contributing to the fulfilment of the objectives of the system of administration of justice and of the overarching goal of a harmonious and effective working environment. The Panel considers it vital, therefore, for the Tribunals to adopt, as a priority, specific measures, as outlined herein, to contribute to the development of a consistent body of jurisprudence.

Receivability

344. The Panel notes that, although a set of provisions specify the competence of the Tribunals and the conditions that an application needs to meet,[120] too often receivability is itself a matter of repeated dispute. For example, in *Worsley*, the respondent argued that the application was not receivable. The Dispute Tribunal rejected the motion for joinder filed by the Office of Staff Legal Assistance[121] and held that the application was receivable. The issue was discussed again before the Tribunal, however, previous to the decision of the dispute on its merits, and again the Tribunal declared the application receivable.[122] Moreover, although the Tribunal rejected the application in its entirety, a cross-appeal was filed on behalf of the Secretary-General once more regarding the receivability issue — now dismissed by the Appeals Tribunal.[123]

345. A never-ending debate on receivability is inefficient. The Panel observes the need to have a mechanism for the early resolution of receivability issues, with the effect of a final decision in that regard. A cost-effective and efficient system of administration of justice requires a procedural device for that purpose, for example a motion to dismiss an application, which should be filed, discussed and ruled upon

[120] See, among others, articles 2, 3 and 8 of the statute of the Dispute Tribunal; articles 6 to 8 of the rules of procedure of the Dispute Tribunal; articles 2 and 7 of the statute of the Appeals Tribunal; and articles 7 and 8 of the rules of procedure of the Appeals Tribunal.

[121] Order No. 079 (GVA/2010).

[122] See UNDT/2011/024.

[123] See 2012-UNAT-199.

at the earliest stage possible (which, eventually, could be taken into consideration for the distribution of cases). The decision on receivability would close the debate about that issue.

Ultra petita

346. The Panel notes that more than once the Appeals Tribunal has overruled the Dispute Tribunal's decisions in which the judge awarded compensation that had not been claimed by the applicant or even ordered remedies with regard to matters that had not been the subject of the application or of the management evaluation.[124] In ruling on matters not submitted by a party, the Dispute Tribunal is making decisions that are *ultra petita*. This is problematic. When it ignores the limits or the frame represented by the parties' submissions or awards compensation not requested by the applicant, the Tribunal exceeds its competence in the particular case. The petitions of the parties define the boundaries of the dispute that they submit for a decision, but also the boundaries of their defence. An *ultra petita* resolution therefore denies due process because it does not allow the affected party to exercise its right to contradict any argument or petition that may affect its case or interests (see sect. IV.F).

347. In addition, in granting remedies incurring *ultra petita*, the decisions go against the basis of the Organization's system, in which a case or conflict has first to be subject to management evaluation. In *Munir*, the Appeals Tribunal stated that it "[had] repeatedly held that requesting management evaluation [was] a mandatory first step in the appeal process", citing a long line of jurisprudence.[125] Therefore, the contested decision subject to management evaluation limits the jurisdiction of the Tribunals as to the review of the matter and the consequent remedies that can be granted.

Remedies

348. The right to an effective remedy is an essential principle of international human rights law and an indispensable requirement for the credibility of any system of justice. The current internal system of justice is designed to provide both judicial and non-judicial remedies to staff members at different stages of the justice system. The Dispute Tribunal has the power to adjudicate employment-related disputes, review administrative decisions and impose disciplinary or non-disciplinary measures for misconduct or abuse of authority. It can rescind administrative judgments and order compensation where a staff member has successfully established a claim. Both Tribunals can issue interlocutory orders and give interim relief under certain conditions. The Panel has analysed the powers of the Tribunals to assess whether they are able to order effective remedies that render justice, adequately compensate for the loss ensuing from an illegal decision and enforce the implementation of their orders and any beneficial outcome in favour of a staff member in other processes of dispute resolution.

[124] See, for example, *Nartey* (2015-UNAT-544), *Munir* (2015-UNAT-522) and *Tadonki* (2014-UNAT-400).

[125] See 2015-UNAT-522, para. 43.

Remedies as part of a judgment

349. While the Dispute Tribunal has the competence to order the rescission of a contested administrative decision or specific performance, in cases concerning appointment, promotion or termination it is bound by article 10 (5) (a) of its statute to also set an amount of compensation that the Administration may elect to pay as an alternative. The amount of compensation that the Tribunal can order cannot exceed the equivalent of two years' net base salary of the applicant, except in exceptional circumstances. In this respect, there is no material change from the previous system. The Redesign Panel was critical of that provision, deeming it inconsistent with the rule of law and rendering the justice system lacking in the authority to finally determine rights and grant appropriate remedies. While respecting the principle of separation of powers and recognizing the authority of the legislature (in this case the General Assembly) to legislate on the range of remedies that the Tribunal can order, the Panel also sees the provisions of article 10 (5) as problematic.

350. Under the current law, the Dispute Tribunal has the power to determine and order an effective remedy, but the choice to grant it is left to the Secretary-General. The claimant staff member, on the other hand, has no option but to accept, even if the payment of compensation (if the Secretary-General chooses that option) in the circumstances of the case is neither adequate nor effective as a remedy, compared with the rescission of the administrative decision or specific performance. Another aspect of the problem is the status quo ante that an administrative decision retains, even after it has been held to be illegal by the Tribunal.

351. In addition to the compensation stipulated as an alternative relief to the rescission of the administrative decision or specific performance, the Dispute Tribunal has the power, under article 10 (5) (b) of its statute, to order compensation for harm not exceeding two years' net base salary of the applicant, where the harm is supported by evidence. However, the statute also grants discretionary authority to the Tribunal to award a higher amount in exceptional cases. The Tribunal must give reasons for the exceptional award. In principle, the Panel finds no undue limitations on the power of the Tribunal in this respect. Nevertheless, the lack of precise guidance on what consequences of an administrative decision or action constitute "harm" under the applicable law, rules and regulations has impeded the emergence of clear jurisprudence. There is also no statutory guidance on the criteria that should be applied to determine either that actual harm has occurred or the severity of harm that would result in the exceptional award.

352. Article 10 (7) of the statute of the Dispute Tribunal and article 9 (3) of the statute of the Appeals Tribunal prohibit the award of exemplary and punitive damages. A volume of case law of both Tribunals suggests that a clearer understanding needs to be reached on the distinction between moral damages for harm and punitive damages, in order that the scope of remedy by way of compensation for harm, in particular for moral damages, is more precisely determined.

353. The Appeals Tribunal has held that the opinion of the trial judge as to how to determine damages in each particular case must be respected.[126] It has also held that the Dispute Tribunal has "an unquestioned discretion and authority to quantify and

[126] See *Lutia* (2011-UNAT-117).

order compensation under article 10 (5) of its statute" for a violation of the legal rights of a staff member.[127] Nevertheless, the Appeals Tribunal has reduced the amount of compensation awarded by the Dispute Tribunal in a number of cases. In the absence of clear criteria that both Tribunals follow, consistency in assessing harm or determining moral damages or adequate compensation cannot be assured.

Other remedies

354. The Dispute Tribunal may also order payment of compensation under article 10 (4) of its statute to compensate a staff member for the delay where, before the determination of merits, it has remanded, with the concurrence of the Secretary-General, the case for the correction of a required procedure that the Administration had failed to observe. The statutory limit of such an award is three months' net base salary of the applicant. The Tribunal is thereby enabled to provide the staff member with an effective remedy for a delay caused by granting the Administration the opportunity to correct its lapses.

355. The Dispute Tribunal can, under article 2 (2) of its statute, also enforce the implementation of an agreement reached through mediation. This allows it to provide remedy against any prevarication on the part of the Administration to frustrate the resolution of the dispute through the informal processes, which has been a repeatedly stated objective of the new justice system. Under their case management powers, both Tribunals can issue an order or give any directions for the fair and expeditious management of a case and where they deem such an order in the interest of justice.[128] Lastly, almost every international administrative tribunal has the power, in cases in which it has established that an appeal was well founded, to order the respondent organization to reimburse reasonable costs incurred by the appellant, including those of retaining counsel. The Panel proposes that this power be given also to the Tribunals and to amend their statutes accordingly.

Interlocutory orders and interim relief

Suspension of action

356. The Tribunals have been empowered to order temporary relief to either party by way of interim orders, where the contested administrative decision appears prima facie to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage.[129] Such orders include temporary relief by suspending the implementation of the contested administrative decision, except in cases of appointment, promotion and termination. A staff member who seeks relief from the judicial system in these three areas would have no recourse to interim relief. It may also be noted that no injunctive relief can be granted when the decision has already been implemented. In cases in which the staff members concerned are notified of the decision adverse to them after it has been implemented, they could receive no injunctive relief. In such cases, the Tribunals have no power to protect the staff members concerned from the adverse effects, even if the contested administrative decision is found to be illegal.

[127] See *Zhouk* (2012-UNAT-224).

[128] Article 18 bis of the rules of procedure of the Appeals Tribunal and article 19 of the rules of procedure of the Dispute Tribunal.

[129] Article 9 (2) of the statute of the Appeals Tribunal and article 10 (2) of the statute of the Dispute Tribunal.

357. Interlocutory orders were not originally appealable. In a recent amendment by the General Assembly, however, they were made appealable, and the filing of an appeal would have the effect of suspending the execution of the order. This would effectively make the power of the court to issue temporary relief redundant. This applies also to the power of the Dispute Tribunal to order a suspension of action under the contested administrative decision pending the completion of a management evaluation and the delivery of a response letter to the staff member by the Management Evaluation Unit. Under article 2 (2) of the statute of the Dispute Tribunal and article 13 of its rules of procedure, a staff member can apply for suspension of action. The Tribunal must issue an order on such an application within five working days of the application being served on the respondent. If the application is granted, the implementation of the decision is suspended until the evaluation has been completed and the applicant has received the response. One of the concerns expressed with regard to article 2 (2) is that the automatic vacation of an order of the Tribunal for suspension of action upon the completion of the management evaluation allows an executive evaluation to override a judicial order. With the amendment allowing appeals to be filed against interim orders, and an automatic suspension of any interim order of the Tribunal upon the filing of an appeal, the power of the Tribunal in this respect becomes ineffectual.

358. The Panel concludes that, while the Tribunals can order remedies and interim relief under their statutes, the remedies within the scope of their jurisdiction are limited and, in some instances, as pointed out above, inadequate and not fully effective. The Panel believes that the authority of a court to order the suspension of action should be truly effective and any statutory or functional impediments in this regard need to be removed.

Publication of judgments

359. In another vein, the Panel recalls that the decisions of the Tribunals must be public.[130] Judgments are published so that both staff members and managers can easily consult them. This is being done. This is extremely important for improving managerial practices and determining the implementation of staff rules and for the predictability of the justice system.

360. Nevertheless, the Panel recommends that judgments be issued in two versions, as is done by other tribunals: an official true copy of the original decision would be delivered to each party, whereas only a redacted document should be published. In the latter version, the names of the managers and staff members referred to therein would be redacted, thus allowing the achievement of the benefits of publishing the decisions in order to make their reasoning well known to the entire structure of the Organization, but without affecting the honour or personal data of the individuals involved. This would solve also the problem of specifying names in referrals for accountability. Certainly, for the measure to be effective, it would be necessary to prohibit any person from sharing or divulging the true copy of a judgment.

[130] See article 11 (6) of the statute of the Dispute Tribunal, article 26 of the rules of procedure of the Dispute Tribunal, article 10 (9) of the statute of the Appeals Tribunal, and article 20 of the rules of procedure of the Appeals Tribunal.

Pro-staff Dispute Tribunal and pro-management Appeals Tribunal?

361. The Panel came to realize that a figures-based perception exists in the sense that the system of justice works in favour of staff members at the Dispute Tribunal level and in favour of management at the Appeals Tribunal level. Such a perception undermines the trust of every member of the Organization in the system of administration of justice, thus cultivating a sense of helplessness and ever-opened disputes.

362. In 2013, the Dispute Tribunal disposed of 325 cases, 137 (42 per cent) in favour of the respondent and 83 (26 per cent) in favour of the applicant (in full or in part).[131] In 2014, it disposed of 320 cases, 97 (37 per cent) in favour of the respondent and 57 (21 per cent) in favour of the applicant (in full or in part).[132]

363. Regarding the Appeals Tribunal, in 2012, 63 per cent of the appeals were filed by staff members and 37 per cent on behalf of the Secretary-General.[133] In 2013, 99 appeals were filed relating to Dispute Tribunal decisions: 62 by staff members and 37 on behalf of the Secretary-General. With regard to the former, the Appeals Tribunal rejected 45 (73 per cent) and granted 17 (27 per cent) in full or in part, whereas regarding the latter, it rejected 6 (16 per cent) and granted 31 (84 per cent) in full or in part.[134] In 2014, the Appeals Tribunal received 86 appeals relating to Dispute Tribunal decisions: 40 (47 per cent) from staff members and 46 (53 per cent) on behalf of the Secretary-General. With regard to the former, it rejected 30 (75 per cent) and granted 8 (20 per cent) in full or in part, whereas regarding the latter, it rejected 13 (28 per cent) and granted 33 (72 per cent) in full or in part.[135]

364. It is the opinion of the Panel that an analysis of the numbers does not allow a conclusion (nor the opposite) that the Tribunals decide in the alleged biased way (i.e. a pro-staff Dispute Tribunal and a pro-management Appeals Tribunal). In fact, given that the above-mentioned figures are reported as isolated categories (i.e. how many pending, new and disposed cases before each Tribunal and how many appeals are filed by and disposed in favour of the applicant or the respondent), they provide insufficient information to track the procedural history of the cases. An observer cannot therefore obtain accurate knowledge of, for example, how many Appeals Tribunal decisions disposed of in favour of the Secretary-General within a calendar year were pronounced against Dispute Tribunal decisions disposed of in favour of staff members in the same period.

365. Consequently, although the figures do not confirm the perception, they show that the rejection rates are relatively equivalent at both Tribunals. Moreover, other variables should be taken into consideration, such as the very high self-representation rates (even higher at the Appeals Tribunal level) and the pre-trial (either at the management evaluation stage or before the Dispute Tribunal) or informal settlement of disputes. What the Panel does observe is the need for hard data and detailed statistics about the way in which the Tribunals are deciding cases. An improvement in the quality of the information collected in the reports on the

[131] The other cases were withdrawn, closed for want of prosecution or closed by inter-registry transfer, among other things (see A/69/227, para. 53).

[132] In addition, 31 per cent of the applications were withdrawn (see A/70/187, para. 42).

[133] See A/69/227, para. 72.

[134] See ibid., para. 81.

[135] See A/70/187, para. 63.

administration of justice will surely help the system and prevent erroneous perceptions.

366. The foregoing notwithstanding, the Panel emphatically stresses that a system of justice is more than numbers. A judicial decision authoritatively terminates a dispute, thus providing certainty and guidance as to the content of the relevant rules and the behaviour expected of both managers and staff members. The benefits of having a mechanism of formal settlement of disputes therefore extend far beyond the system of justice, throughout the regular operation of the United Nations. The achievements of the system of administration of justice are thus to be seen not that much in the particular case presented before a judge, but in the improvement of managerial practices, the observance of staff rules and the prevention of prospective disputes.

Dispute Tribunal

367. The Dispute Tribunal consists of three full-time judges and two half-time judges. On a provisional basis, they are assisted by three ad litem judges. The arrangement concerning the ad litem judges was intended by the General Assembly as a transitional measure to help the Tribunal to deal with the backlog of cases that existed in 2009 when the new system was created. The number of cases being filed thereafter, however, clearly requires that the current number of judges be maintained. The Panel therefore supports the view that, continuously, since 2010, has been held by the Internal Justice Council, and shared by the Tribunal judges, that three additional permanent judges should be appointed to replace the ad litem judges. The statute of the Tribunal should be amended accordingly.

368. The suggested conversion, which will not entail additional costs, would be beneficial for the formal system in many respects. In particular:

(a) It would do away with the situation in which judicial functions are exercised by persons whose position is not envisaged in the statute of the Tribunal;

(b) It would remove any grounds for a perception that the ad litem judges may not be as independent given that, unlike the regular judges, they are appointed (and reappointed) on a yearly basis;

(c) It would introduce a proper degree of certainty, both for the persons involved and their colleagues, which comes with the seven years' commitment to the judicial work;

(d) It would help to promote and improve the teamwork required for consistency in the exercise of the judicial function.

369. There are additional advantages in having two permanent judges at each duty station. Importantly, this will make it easier, both logistically and in a formal sense, to form panels of three judges — with the participation of one of the two part-time judges — to consider cases of particular complexity or importance, as envisaged in article 10 (9) of the statute of the Dispute Tribunal. The Panel recalls in this connection that, when the discussions were held on the reform of the internal justice system, the Secretary-General suggested that all cases would be heard by a panel of

three judges, representing diverse legal traditions and practices, as well as cultural and linguistic backgrounds.[136]

370. The position taken by the Secretary-General was not without merit. The current arrangement is a compromise, which created an option for a three-judge panel as, essentially, an exceptional mechanism. The Panel is of the view that more use should be made of a panel of three judges of different backgrounds in order to deal with issues of consistency of case law and procedures applied in adjudicating cases. To simplify the recourse to a three-judge panel, article 10 (9) of the statute of the Tribunal should be amended, vesting the authority to refer a case to such a panel with the President of the Dispute Tribunal rather than the President of the Appeals Tribunal.

371. The President of the Dispute Tribunal is currently elected from among the three full-time judges for a renewable term of one year.[137] The suggested regularization of the ad litem judges would increase the number both of the judges voting (from five to eight) and of those eligible for the presidency of the Tribunal (from three to six). This in and of itself could provide additional authority to the office of the President. In addition, and probably more importantly, the Tribunal as an institution could benefit from changing the current system of electing the President on what in reality is a rotational basis. The term of the current presidency should be extended from one year to a longer period, such as three and a half years. This would enable the President to provide consistent leadership, including the harmonization of jurisprudence and procedures in a judicial institution that is geographically dispersed and where most cases are adjudicated by a single judge. It will also enable him or her to deal with a time frame for issuing orders and judgments. A longer term of office will also be helpful for managing the direct reporting line to the General Assembly suggested above (see para. 183).

372. The Panel reiterates that it is advisable for the Dispute Tribunal to consider holding hearings in other duty stations as appropriate. Also for that reason, it is important that cases be assigned to the judges, including the half-time judges, at an early stage for proper management of the case.

Appeals Tribunal

373. The Secretary-General endorsed the recommendations of the Redesign Panel that the Appeals Tribunal have limited appellate jurisdiction over Dispute Tribunal judgments. It is limited to the following grounds:

(a) The Dispute Tribunal has exceeded its jurisdiction or competence;

(b) The Dispute Tribunal has failed to exercise the jurisdiction invested in it;

(c) The Dispute Tribunal has committed a fundamental error in procedure that has occasioned a failure of justice;

(d) The Dispute Tribunal has erred on a question of law;

(e) The Dispute Tribunal has erred on a question of material fact.

374. The right to appeal lies with staff members and the Secretary-General.

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[136] See A/61/758, para. 19, and A/62/748, para. 110.

[137] Article 4 (3) of the statute of the Dispute Tribunal and article 1 of its rules of procedure.

375. In 2013, half of the appeals were filed by staff members and half on behalf of the Secretary-General; in 2014 the figures show that 65 per cent of the cases were filed by staff members and 35 per cent on behalf of the Secretary-General. For the period 2009-2014, 686 appeals were filed and 585 disposed of. The Appeals Tribunal has a backlog of 101 pending cases.[138] The number of interlocutory motions filed before the Tribunal increased from 39 in 2013 to 84 in 2014. Motions generally require swift disposal in order to provide the parties with timely judicial direction and to avoid delay.

376. Besides the caseload, the Panel notes:

(a) That the judges are the final arbiters in the administration of the justice system within the Organization, as well as for a number of agencies, including UNRWA, the United Nations Joint Staff Pension Board and the International Civil Aviation Organization;

(b) That the judges serve on a part-time basis because most of them serve on their national benches;

(c) That most motions are filed when the Tribunal is not in session, but require time-sensitive judicial attention;

(d) That the judges took the initiative to have a system of rotating "duty" judges beginning in 2010, but decided to abandon it because the number of motions and time taken between sessions rendered the system burdensome (and it was not remunerated).

377. The Panel assesses the workload of the Tribunal as heavy and burdensome. It is of the view that urgent motions should be dealt with *in limine* as preliminary issues that will provide early indicators to the parties whether to proceed or settle, thereby reducing the number of appeals. The only reason why the caseload has been moving as much as it has is the drive and commitment of the judges who have voluntarily undertaken to use their own time to peruse and prepare the cases. The situation is untenable, however, and the increase in the number of appeals will present new challenges and delays.

378. A matter of concern is that there is bound to be a backlog of cases and justice delayed. The Panel notes that the General Assembly previously addressed the matter of a backlog by a costly injection of funds for hiring part-time and ad litem judges, which is not a cost-effective approach. This should be avoided by providing the reasonable resources and capacity needed by the Tribunal.

379. In the Panel's assessment, the request for an additional position of Legal Officer (P-3), to strengthen the Registry and to provide urgently needed support to the judges to address the caseload and deal with urgent motions between sessions, must be granted.[139]

380. Apart from full resources, the Panel is of the view that the profile of the judges for selection to the Tribunal should be reviewed to overcome the obstacle to speedy disposal of cases posed by the lack of availability of judges. Most of the judges are serving full time as national judges. The time that they can spare for the Tribunal is

[138] See A/70/187, paras. 55-57.

[139] The request was made in 2014 concurrently by the Secretary-General (see A/69/227), the Internal Justice Council (see A/69/205) and the judges themselves (see ibid., annex II).

three sessions of two weeks each. The criteria of availability should be examined and consideration should be given to creating more permanent positions and reducing the number of judges from seven to five. To guarantee continuity and the proper processing of urgent motions, the Panel sees two possible solutions. The first is to give more power to the President to deal with all these matters and to compensate him or her accordingly, probably on a half-time basis. The second is for the Registrar, in coordination with the President, to assign a case at a very early stage to a panel of the Tribunal and identify the presiding and reporting judges. The latter is then de facto the duty judge for that case. In both solutions, the Panel sees no requirement for the President or a duty judge to reside (temporarily) at the seat of the Tribunal. Most, if not all, international administrative tribunals function very well without such a residence requirement.

381. As the second-instance tribunal, the Appeals Tribunal is responsible for providing guidance to the Dispute Tribunal and setting jurisprudence, which enhances predictability and certainty in the internal justice system. It is important that the judges take responsibility for:

(a) Comprehensive rules of procedure and criteria for the parameters of substantive jurisdiction, distinguishing between the judicial role of adjudication and the executive role of implementation;

(b) Clarification of rules and procedures so that a single system is applied uniformly and is not open to reliance upon diverse individual national practices and experiences of the judges;

(c) Reaching consensus on harmonization of differentials in common law and civil law practices, such as whether to require witnesses to make sworn declarations;

(d) Clarification of the standards of proof and disclosure of material documents, to remove randomness in standard of proof in circumstances unique to the United Nations, namely the lack of subpoena powers or enforcement powers to secure the attendances of witnesses who have retired from or work outside the Organization; the fact that banks cannot be subpoenaed to produce records in serious fraud charges; and the fact that a staff member convicted by the national authorities may not be disciplined unless investigated by the United Nations;

(e) Providing reasoned decisions and endeavouring to deliver judgments and reasons together, instead of the practice of announcing the decision first and providing reasons at the next session;

(f) Providing guidelines for the adjudication of purely administrative issues and of conduct and disciplinary cases;

(g) Providing guidelines for investigations, compensation, sentencing, receivability and appealability of appeals, as well as the criteria for referrals for mediation or to the United Nations Ombudsman, referrals for accountability, for Management Evaluation Unit review and the holding of oral hearings;

(h) Providing for protection of witnesses, respect for confidentiality and redaction of names.

Remuneration of Appeals Tribunal judges

382. The Internal Justice Council[140] and the Appeals Tribunal judges themselves in their discussions with the Panel have raised the principle and level of the latter's remuneration, which currently is based on a pay-per-judgment principle with levels similar to those of the International Labour Organization Administrative Tribunal.

383. Currently, only two international administrative tribunals function on a full-time basis with full-time judges: the Dispute Tribunal and the European Union Civil Service Tribunal. All other international administrative tribunals function on an ad hoc basis, convening when the caseload so requires. In the interval, the Registrars look after day-to-day matters, including the written proceedings. The President is available for consultations through modern communication means. He or she is not required to be stationed at the seat of the tribunal.

384. The judges of all these international administrative tribunals, again with the exception of the two mentioned above, are remunerated per case, including for time spent as duty judge. This has no adverse effect on their professional integrity and independence. In some tribunals, the remuneration is paid in equal shares to the judges sitting on a particular case. In others, a higher portion of the total sum is given to the reporting judge and/or the President as compensation for the additional work that he or she performs between sessions. Normally, when the President distributes the work adequately and evenly, the overall remuneration averages out among the judges.

385. The level of the total remuneration differs. In one group, consisting of the International Labour Organization Administrative Tribunal, the Appeals Tribunal and dozens of tribunals in Europe, the levels are roughly aligned with that of the International Labour Organization Administrative Tribunal, but variations owing to exchange rate evolutions do occur. For most tribunals, this is a flat rate per case; in a few others there is a flat rate per day, and the President and the Registrar establish the number of days that were required depending on the actual workload, i.e. the complexity of the case. Another group, consisting of the international financial institutions, has higher, sometimes much higher, levels than the International Labour Organization Administrative Tribunal.

Internal Justice Council

386. The Internal Justice Council is, of course, actively involved in the selection of judges whenever there are vacancies. Moreover, it issues authoritative annual reports and gives continuous expert advice on specific issues. It is bringing more uniformity and efficiency to the system. In other words, it has swiftly become a valuable institution and has to be commended for its excellent work.

387. Looking at the initial mandate, as outlined in paragraph 69 above, the Panel observes that the Council's functions are evolving. Its main role has become that of providing its views on the implementation of the justice system, which includes making important suggestions for improvement, and answering specific questions from the General Assembly. The Panel is of the view that it remains too early in the process to introduce formal changes to the Council's written mandate or to review its status.

[140] See A/70/188, paras. 73-76.

388. On the other hand, the Council has requested to clarify in its terms of reference that the two members whose candidatures are submitted as "representatives" of management and staff are not advocates or counsel of staff or management but simply persons entrusted with the duty of helping the Council to discharge its mandate. As mentioned above, the Panel supports this.

J. Interaction between the informal and the formal system

389. When the General Assembly put into place the new administration of justice system, it paid attention to both the informal and the formal systems. As explained in paragraph 23 above, it, first, decided to create a single integrated and decentralized office of the ombudsman for the Secretariat, funds and programmes, including a mediation division. The most important changes, however, concerned, the formal part of the justice system.

390. The informal system largely consists of the Office of United Nations Ombudsman and Mediation Services, but is not limited to it. Other alternative resolution mechanisms can be found throughout the United Nations and are being used. They can, for example, be found in the Office of Human Resources Management and, to some extent, in the Ethics Office, with staff representatives, with conduct and discipline teams in peacekeeping missions and with specialized units.

391. As far as the relationship between the formal and the informal systems is concerned, the Panel observes, first, a separation between the two systems, with, for example, separate reporting lines to the General Assembly. Cooperation within the Secretariat does exist.[141] These are bilateral lines, though, for which the stakeholders are to be commended. The Panel is of the view, however, that, to enhance cooperation between the formal and informal parts of the justice system, it would be useful to set up a forum where all stakeholders would regularly meet to exchange useful information and identify areas for improvement, while respecting one another's roles and independence. This should be under the auspices of the Council, which already has bilateral exchanges with stakeholders. This works in other organizations, such as the World Bank.

392. It is the Panel's opinion that a more integrated dispute resolution system could resolve many inconsistencies or misunderstandings and facilitate a smoother resolution of conflicts.

K. Identification of causes of disputes and possible solutions, dispute avoidance and early resolution

393. The ultimate purpose of an overall justice system is to ensure that problems are addressed as early as possible in an efficient and expeditious manner, given that a full formal procedure is adversarial, legalistic, protracted and costly in terms of both time and money.

394. Statistics show that a great number of cases concern interpretation of rules and career issues. Many appeals can be avoided if staff can easily find and understand

[141] See, for example, A/70/151, paras. 50-58.

the applicable rules and instructions. As has been recommended by the Panel, the rules and instructions must be clear.

395. Second, the procedures for selection, promotion and performance management, and their application, should be improved, given that they are the cause of too many disputes.

396. A last, but very important, group of cases concern investigations. Although assessing how investigations are carried out by the Administration exceeds in principle the limits of its mandate, the Panel has found it necessary to comment on the subject because of its considerable impact on the system of justice.

397. As indicated above, this issue not only causes harmful effects regarding respect for due process (see para. 256), but also affects the professionalization of the system and the functioning of the Tribunals. Hence, the Panel salutes the fact that the topic is already the subject of a continuing special assessment.

398. A defective investigation has a direct impact on the output of a process, given that it cannot provide the information required for decision-making, thus forcing the Tribunals to engage in a repeated exercise of fact-finding. Apart from the wasted time and the increased workload, evidence is often not available or at most can be reached only through documentation, but not directly. In this way, the Tribunals are unable to arrive at high-quality decisions. Investigations are therefore ineffective, turning into "impunity investigations".

399. The various stakeholders interviewed by the Panel agree that fact-finding investigations are often unprofessionally conducted, and many times the Tribunals dismiss the results achieved. Consequently, there is a widespread perception of impunity. On the other hand, staff members do not trust the investigations carried out by OIOS, nor those in the charge of peers. This is a harmful perception for both the system of administration of justice and the working environment within the Organization. In particular, the current peer review system under Secretary-General's bulletin ST/SGB/2008/5 must be reviewed.

400. Staff should also be informed of the conclusions drawn and lessons learned from the outcome of cases that went through the dispute resolution system. The Department of Management has issued three important guides for managers with lessons learned from the Tribunals' jurisprudence, two in 2010 and one in 2011. Since then, the practice has, unfortunately, been discontinued. The most recent overview, on disciplinary matters only, was issued in 2015 by the Department of Field Support and took the form of an outline of principles and issues on disciplinary matters from the Tribunals. In some duty stations, managers are briefed on the jurisprudence of the Tribunals, in others unfortunately not.

401. When the Organization implements new policies and practices, this should be made known to all staff and be included in an easily accessible manual. Only in this way will the internal law as it stands and develops be respected and effective, and will the internal justice system have the confidence of staff. As an example, the Secretary-General submits an annual report to the General Assembly on practice in disciplinary matters and cases of possible criminal behaviour.[142] These are issues that should be brought directly to the attention of all staff, as lessons learned and as

[142] Most recently, A/70/253.

a message that there are (certain) limits to impunity. This is done in other organizations.

402. A mechanism for early management of conflict is necessary. Early resolution through the informal process contributes to a more harmonious working environment. It constitutes a change in mindset, a change in the approach to conflicts, moving away from an adversarial — trying to win — mindset.

403. An issue can, for example, often be clarified by a discussion between the staff members directly concerned. They have the first responsibility.

404. Sometimes, however, it is necessary to involve a third party to unblock and resolve an issue. The first in line for early identification of issues, for giving assistance in dispute resolution and for mediation is management. It cannot be emphasized enough that managers have the prime responsibility to resolve conflicts in their units. Most conflicts occur there. People management and conflict management are essential parts of the management function. Managers must accord priority to dispute resolution and not leave this for the United Nations Ombudsman or the formal, and adversarial, system to take care of. Knowledge and experience in these fields must be part of the selection criteria and adequate training must be provided to maintain and improve skills in this respect, whenever necessary. Managers must be held accountable for their performance in conflict management.

L. Adequate resources and cost-effectiveness

405. The General Assembly decided[141] that the new justice system should be adequately resourced. Whether the system is cost-effective and well resourced is not self-evident. The Panel stresses the importance of assessing the issue as primarily conceptual, rather than financial.

406. The implementation of a system of administration of justice takes time. The first six years of operation of the new system have allowed sufficient time to ascertain that, in some areas, there is a pressing need for some adjustments in terms of resourcing. Given that the Panel found no "fat" in the system, and none of the stakeholders suggested budget cuts, this is not a question of allocation of available resources, but rather of injecting additional resources into the system.

407. Throughout the present report, the Panel has recommended various measures aimed at improving the system, some of which involve increased resources. Many stakeholders interviewed suggested the overriding need for more resources for the Office of Staff Legal Assistance — an opinion that is shared by the Panel (see para. 333). Regarding the Management Evaluation Unit, the Panel observes an increase in the number of requests for review. It recommends that the Department of Management closely monitor the Unit and its workload to ensure that the Unit remains adequately resourced. On the other hand, the regularization of the status of the ad litem judges by virtue of their replacement with three additional permanent judges (see para. 367) would have no financial impact. The Dispute Tribunal's making more use of article 5 of its statute, however, would entail some additional costs associated with reaching field duty stations and holding hearings in the

[141] Resolution 61/261, para. 4

appropriate conditions. As recommended, the Appeals Tribunal needs an additional legal officer and to restructure its operations (see paras. 379 and 380).

408. The above-mentioned recommendations involve some increase in the costs of the system, but are not too burdensome. The Panel underlines, however, that it has also made suggestions for dispute avoidance, such as improved legislation and processes, and early resolution of conflicts, which should foster more settlements and ultimately reduce the number of cases passing through the system and, consequently, reduce the cost of the formal system. The improvement of operating conditions of the Tribunals, such as clearer procedural rules, uniform and predictable criteria for decision-making and pro-active case management, should expedite proceedings and also lead to refined and streamlined judgments and, ultimately, less litigation.

409. A beginning has been made, but the most important change that has to be brought about is the change in mindset of many (still). Managers must manage their staff professionally. This is not always the case. In addition, the United Nations Ombudsman has drawn attention to abusive behaviour and incivility in the workplace.[144] The Panel has regularly heard similar comments about such behaviour, including with regard to women. Managers must also manage conflicts in their teams and not leave it to the system to resolve them.

410. The justice system is a safety net for situations that could not be resolved elsewhere. It plays an important part in securing a respectful workplace. The overall goal is a harmonious working environment that allows staff to implement the Organization's mandate and to bring to a good end its many programmes and projects. For this, as mentioned above, many additional policy measures have to be taken.

411. The budget of the Office of United Nations Ombudsman and Mediation Services amounts to some $10 million and the format justice system costs some $20 million, to which must be added the costs of many stakeholders, not only the lawyers in the Office of Legal Affairs and the Administrative Law Section of the Office of Human Resources Management, but also the many managers and officers who are, one way or the other, involved in dispute resolution.

412. If the overall goal is achieved, it is money well spent.

V. Recommendations

413. The Panel makes the following recommendations:

Independence

Office of Administration of Justice

Recommendation 1. The Office of Administration of Justice should reorganize the distribution of the offices of its respective components in New York.

[144] See A/70/151, para. 63.

Office of Staff Legal Assistance

Recommendation 2. To protect the counsel-client relationship, the legal officers of the Office of Staff Legal Assistance should be granted a "functional exemption" from those staff rules that may be incompatible with the independence from the Administration that they require to perform their duties (paras. 172 and 326).

Recommendation 3. The status of counsel for United Nations staff members serving as legal officers in the Office of Staff Legal Assistance should be officially established, thus granting a functional exemption from those staff rules that may be incompatible with their independence from the Administration in the performance of their duties (para. 172).

Registries

Recommendation 4. A clearer institutional link between the Registries and the Tribunals should be established and the status of officer of the court for United Nations staff members for as long as they serve as Registrars or staff of the Registries should be officially created (para. 173).

Recommendation 5. Judges should have a formal role in the process of selection and appointment of the Registrars and their staff, as well as in the evaluation of their performance (para. 173).

Recommendation 6. The functions of the Principal Registrar in support of the Tribunals should be further clarified (para. 175).

Tribunals

Recommendation 7. The legal status of the judges of the Tribunals has to be further clarified:

(a) The emoluments and conditions of service of the Dispute Tribunal judges should be established specifically for them and not by reference to the D-2 level;

(b) It should be clearly specified that the only "rank" that the judges of the Tribunals possess is that of a judge of the internal judicial system of the United Nations;

(c) The judges of the Appeals Tribunal should be recognized as officials other than Secretariat officials and should be granted the privileges and immunities currently enjoyed by the Dispute Tribunal judges under article V, section 18, of the Convention on the Privileges and Immunities of the United Nations (para. 180).

Recommendation 8. Both Tribunals should submit their annual reports directly to the General Assembly and their Presidents should be invited to present them to the Assembly (para. 183).

Transparency

Recommendation 9. Knowledge of the system on the part of all staff members should be increased in order to ensure its universal accessibility (para. 264).

Recommendation 10. The Dispute Tribunal should apply standard criteria regarding the need to hold oral hearings. The Appeals Tribunal should increase the number of oral hearings (para. 262).

Recommendation 11. The Appeals Tribunal should enhance the reasoning in its judgments (para. 197).

Recommendation 12. The Office of Administration of Justice should further improve the search engine of the Tribunals' jurisprudence (para. 199).

Recommendation 13. The Organization should further consolidate rules, regulations and instructions in a single manual and make them easily accessible to and understandable by staff. The Organization should further improve the transparency of decision-making by management (paras. 205 and 206).

Professionalization

Recommendation 14. Provision should be made for knowledge of human rights law and international law in the criteria for appointment of judges, with proven practical experience in administrative law and criminal justice and relevant institutional knowledge being desirable. Due diligence should be exercised in the recruitment process (para. 210).

Recommendation 15. There should be a better induction process for judges before they assume their duties (para. 211).

Recommendation 16. A single code of conduct should be introduced for all counsel acting before the Tribunals (para. 215).

Decentralization

Recommendation 17. The mobility of the Dispute Tribunal should be increased, in accordance with article 5 of its statute, thus enabling the Tribunal to reach duty stations in the field and carry out hearings in the appropriate conditions (paras. 223 and 372).

Recommendation 18. The Administration should adopt proper measures to facilitate the functioning of the Dispute Tribunal, with regard to time-zone differences between Headquarters and the Tribunal locations (para. 226).

Recommendation 19. The Administration should introduce a degree of decentralization (para. 224).

Recommendation 20. The Management Evaluation Unit should have officers in the field (para. 227).

Recommendation 21. The Office of Staff Legal Assistance should have means for direct counsel-client interface (para. 228).

Access to justice

Recommendation 22. The Organization should enhance provision of ready access to focal points, staff training, jurisprudential guides and resources, among other things, in field offices and missions (para. 236).

Recommendation 23. The Organization should provide effective recourse to all who are in an employment or contractual relationship with the United Nations by extending the access of the justice system to its total workforce (paras. 233 and 243).

Rule of law

Recommendation 24. The Organization should establish legal provisions and corresponding procedures to protect staff members from retaliation for appearing as witnesses or for lodging an appeal (paras. 245 and 246).

Due process

Recommendation 25. More detailed rules of procedure should be adopted to enhance consistency in proceedings (para. 259).

Recommendation 26. The Organization should improve access to documentation by staff members (para. 260).

Recommendation 27. A mechanism should be introduced with some flexibility for extension or suspension of deadlines when settlement discussions are under way, and the Dispute Tribunal should have authority to grant requests to that effect (paras. 261 and 262).

Accountability

Recommendation 28. Heads of field missions should be granted delegated responsibility for conduct and disciplinary cases (para. 268).

Recommendation 29. A comprehensive review should be undertaken of the accountability framework for United Nations peacekeeping operations (para. 265).

Recommendation 30. An assessment should be made of referrals for accountability by Tribunals in a meeting of stakeholders under the auspices of the Internal Justice Council, and more precision should be given to the scope and use of such referrals (para. 282).

Recommendation 31. Referrals for accountability should be made only when the persons concerned have been properly heard (para. 281).

Rights and obligations of staff

Recommendation 32. The Dispute Tribunal should more often award costs against a party that manifestly abused the proceedings and summarily dismiss a case under those circumstances (para. 286).

Informal system

Recommendation 33. Managers should be encouraged to respond to mediation attempts positively and to be more proactive in initiating mediation processes (para. 294).

Recommendation 34. The Administration should ensure that the authority to finalize the mediation settlement is duly delegated to the person participating in it on behalf of management (para. 294).

Recommendation 35. Managers should be properly trained in conflict management (para. 297).

Formal system

Recommendation 36. The Department of Management should resume the publication of the lessons-learned guides for managers, identifying the systemic issues (para. 312).

Recommendation 37. The Administration should ensure that Management Evaluation Unit functions can be carried out in compliance with statutory provisions and timelines (para. 319).

Recommendation 38. The Management Evaluation Unit should correct the lack of equal access to documentation and information by both sides (para. 316).

Recommendation 39. The responsibility of the legal officers of the Office of Staff Legal Assistance for their decisions in declining representation owing to any motive other than the absence of a reasonable expectation of success should be addressed within the code of conduct for legal representatives (paras. 215 and 330).

Recommendation 40. The United Nations budget should pay for the basic functioning of the Office of Staff Legal Assistance, but additional funding is necessary (para. 334).

Recommendation 41. The Organization should fill the gap in the grade structure of the Office of Staff Legal Assistance by upgrading one P-3 position to P-4 (para. 335).

Recommendation 42. Judges and Registrars should establish a common approach to the management of staff and resources (para. 338).

Recommendation 43. The Tribunals should adopt specific measures that will contribute to the development of a consistent body of jurisprudence (para. 343).

Recommendation 44. The Tribunals should adopt and apply a mechanism of early resolution of receivability issues (para. 345).

Recommendation 45. The Tribunals should have effective authority to order suspension of action and impediments thereto should be removed (para. 358).

Recommendation 46. Judgments should be issued in two different versions: an official true copy of the original decision delivered to each party and the publication of a redacted version in which the names of managers and staff members referred to therein would be removed (accompanied by a prohibition on any person sharing or divulging a copy of the original judgment (para. 360).

Recommendation 47. Three additional permanent judges should be appointed to replace the ad litem judges (para. 367).

Recommendation 48. More use should be made of panels of three judges of different backgrounds in order to deal with issues of consistency of the case law and procedures applied in adjudicating cases (para. 370).

Recommendation 49. Article 10 (9) of the statute of the Dispute Tribunal should be amended in order to allow the President of the Dispute Tribunal, and not the President of the Appeals Tribunal, to refer a case to a three-judge panel (para. 370).

Recommendation 50. The term of the President of the Dispute Tribunal should be extended to a longer period, for example three and a half years (para. 371).

Recommendation 51. The Dispute Tribunal should consider holding hearings in other duty stations as appropriate (paras 223 and 372).

Recommendation 52. Cases should be assigned to judges, including half-time judges, at an early stage for proper management of the cases (para. 370).

Recommendation 53. The Appeals Tribunal Registry should be enlarged with one additional P-3 legal officer (para. 379)

Recommendation 54. Availability should be included in the profile of candidates for selection as judges of the Appeals Tribunal (para. 380).

Recommendation 55. To guarantee proper processing of urgent motions, the Appeals Tribunal should either give more power to the President to deal with such matters and to compensate him or her accordingly, probably on a half-time basis, or authorize the Registrar, in coordination with the President, to assign a case at a very early stage to a panel of the Tribunal and identify the presiding and reporting judges, with the latter then being the duty judge for all urgent matters in the case (para. 380).

Interaction between the informal and the formal system

Recommendation 56. To achieve a more integrated justice system, a forum should to be set up, under the auspices of the Internal Justice Council, where all the stakeholders of the informal and formal sytems would regularly meet to exchange useful information and identify areas for improvement, while respecting one another's roles and independence (para. 39).

Key causes of disputes

Recommendation 57. The Administration should improve policies and processes (paras. 394 and 395).

Recommendation 58. Investigation procedures should be improved and the current peer review process under Secretary-General's bulletin ST/SGB/2008/5 reviewed (para. 399).

Annex

Terms of reference

Mandate

1. Pursuant to paragraph 10 of General Assembly resolution 69/203 and paragraph 12 of Assembly resolution 68/254, the Independent Panel of Experts appointed by the Secretary-General will conduct an interim independent assessment of the system of administration of justice at the United Nations in all its aspects, with particular attention to the formal system and its relation with the informal system, including an analysis of whether the aims and objectives of the system set out in Assembly resolution 61/261 are being achieved in an efficient and cost-effective manner.

2. Pursuant to paragraph 12 of resolution 69/203, the objective of the interim independent assessment is the improvement of the current system and the assessment should include consideration of, among other things, the elements set out in annex II to the report of the Secretary-General on administration of justice at the United Nations (A/69/227) and in the letter from the Chair of the Sixth Committee (A/C.5/69/10) and any other significant issues relevant to the assessment, such as the role of stakeholders in the system of administration of justice in the preparation of relevant proposals.

3. By paragraph 2 of its resolution 69/203, the General Assembly endorsed the conclusions and recommendations contained in the report of the Advisory Committee on Administrative and Budgetary Questions (A/69/519).

4. Pursuant to paragraph 13 of resolution 69/203, the Panel will submit its report, including recommendations, to the Secretary-General for transmission to the General Assembly for consideration at the main part of its seventy-first session.

5. The Panel will begin its work by 1 May 2015 and complete its assessment and report within six months of commencement.

Composition

6. The Panel will consist of six members appointed by the Secretary-General, taking into account, as provided in paragraph 11 of resolution 69/203, geographical representation and gender balance and having a broad mix of expertise, comprising members with knowledge of internal United Nations processes and United Nations intergovernmental legislation, as well as judicial experience, knowledge of internal labour dispute mechanisms and knowledge of different legal and justice systems, including expertise in employment and/or human rights law.

Administrative and logistical support

7. The Panel will be supported by a secretary and an administrative assistant.

8. The Executive Office of the Secretary-General will assist with administrative and logistical support, including with regard to the travel of the Panel, as required.

Completed this 31st day of October 2015.

(*Signed*) Jorge **Bofill**

(*Signed*) Chris **de Cooker**

(*Signed*) Hina **Jilani**

(*Signed*) Navanethem **Pillay**

(*Signed*) Leonid **Skotnikov**